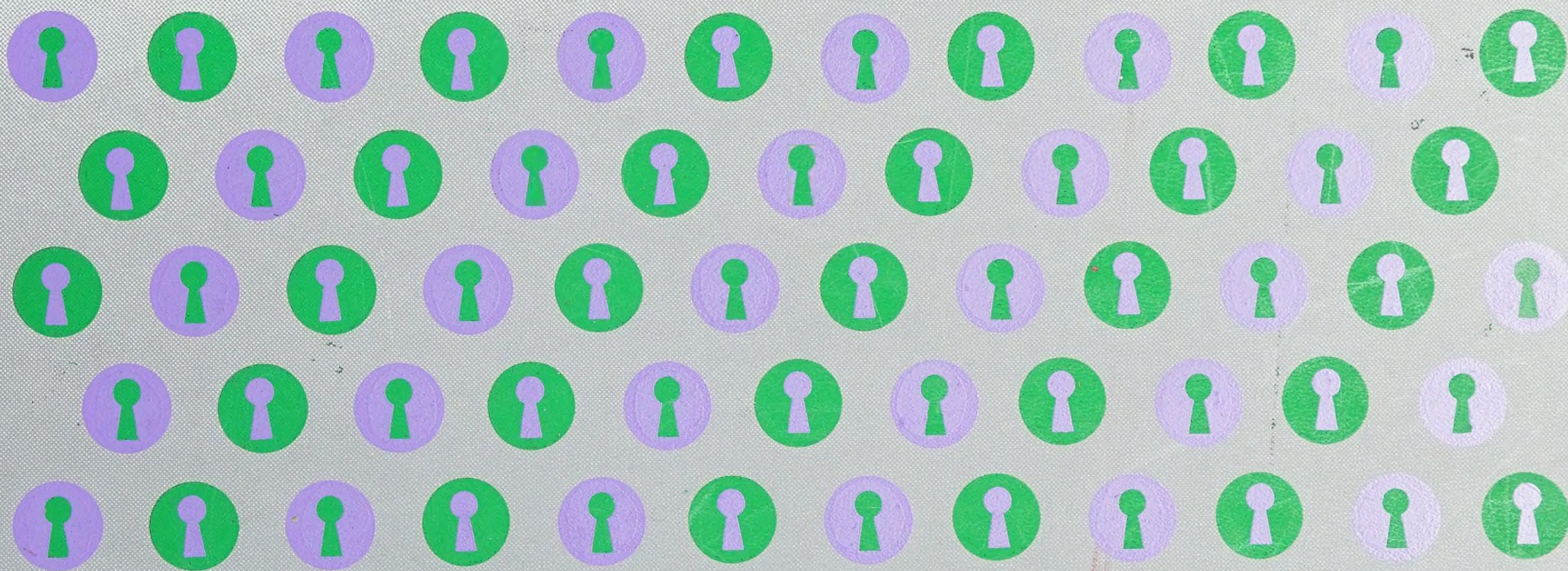


Freedom  
of Information  
— and —  
Protection  
of Individual  
Privacy




MANUAL



Ontario





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Freedom  
of Information  
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MANUAL

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*Printed on recycled paper*



## November 1990 Manual Update

The November 1990 update of the Manual reflects a number of changes from previous updates. Primarily due to the substantive number of revisions to the text, the Manual has been reprinted in its entirety and, unlike previous updates, changes in this edition are *not* presented in bold print.

### Highlights in this edition

Among the more significant updates appearing in this edition are the following:

- Changes resulting from "An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989" (Bill 52) including:
  - New definition of personal information
  - Addition to section 18 to include examination questions
  - Revision to section 45 (Personal Information Bank Index)
  - Revision to section 46 (Retention of record of use)
- Interpretations:
  - Copyright and the Freedom of Information and Protection of Privacy Act
  - Law enforcement
  - Public record of personal information
- New Regulations:
  - Access to originals
  - Security and confidentiality
  - Revised fees
  - Revised research agreement procedures







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# Foreword





## Foreword

Ontario's Freedom of Information and Protection of Privacy Act incorporates the principles of freedom of information and protection of individual privacy in a single Act for provincial ministries and agencies.

The framework for Ontario's legislation is set out in *Public Government for Private People, The Report of the Commission on Freedom of Information and Individual Privacy* published in 1980 after a four-year study headed by Dr. Carlton Williams.

The Commission advanced the following as essential features of a proposed freedom of information law:

- a general public right of access to government-held information;
- a list of specific exemptions from this general right in order to protect the legitimate needs of government for confidentiality; and
- independent review of government decisions to release or withhold information.

Those features are reflected in Ontario's legislation. The legislation also protects the privacy of individuals with respect to personal information about them held by government.

Ontario's Freedom of Information and Protection of Privacy Act was passed on June 25, 1987, after in-depth review by the Ontario Legislature's Standing Committee on the Legislative Assembly. The Act came into force on January 1, 1988.

On January 1, 1990, the Freedom of Information and Protection of Privacy Amendment Act was in force. The Act provides that certain confidentiality provisions in other statutes continue to have effect.

The Municipal Freedom of Information and Protection of Privacy Act, in effect on January 1, 1991, extends the principles of the provincial Act to all municipalities and local boards in Ontario. The Municipal Freedom of Information Statute Law Amendment Act, also effective January 1, 1991, makes consequential amendments to the provincial Act as a result of the Municipal Freedom of Information and Protection of Privacy Act. Explanations to these amendments are included herein.





# Guide to Using the Manual





## Guide to Using the Manual

### Purpose of the Manual

The purpose of the Manual is to assist ministries and agencies in complying with and administering the Freedom of Information and Protection of Privacy Act. The Manual is intended to serve as a guide in carrying out the requirements of the legislation and should be used together with the Act and regulations.

### Organization of the Manual

The Manual is divided into the following sections:

*Introduction to the Act:* The purpose, organization and scope of the Act and definitions of key terms in the Act are outlined.

*Administration of the Act:* The duties of the head of an institution, the Responsible Minister and the Coordinator for freedom of information and privacy matters within an institution are discussed.

*Access to Information:* The right of access to general records and to personal information, the procedures for access and notification and the right to correction of personal information are considered.

*Exemptions:* The exemptions in the Act which limit access to information are discussed.

*Privacy Protection:* The requirements concerning the collection, retention, use and disclosure of personal information are outlined.

*Commissioner and Appeals:* The role of the Information and Privacy Commissioner and the process and procedure for appeals are discussed.

*Fees:* The fees that can be charged and the circumstances when a fee estimate must be provided are considered.

*Offences and Liability:* The offences under the Act are outlined.

*Appendices:* Appendix I, Sources and Acknowledgements, lists reference materials for further information. Appendix II includes flowcharts which show the steps in processing requests and in making certain decisions under the Act. Appendix III contains sample notification letters.

*Table of Contents:* The structure of the Manual and the main headings in each chapter are outlined.

*Section Index:* The sections and key subsections of the Act are listed in numerical sequence together with the page number(s) where they are cited in the Manual.

*Subject Index:* The key words and phrases in the Act are listed in alphabetical order together with the page number(s) where each is discussed in the Manual.

### Content of the Manual

The Manual contains commentaries on the provisions of the Freedom of Information and Protection of Privacy Act. These commentaries on the provisions of the legislation take various forms. There are references to, or paraphrases of, sections and subsections of the Act. There are also interpretations which have been developed to provide a consistent guide for all institutions covered by the legislation.

References are also made to Orders of the Information and Privacy Commissioner which are issued in response to appeals under the Act. These Orders are cited in the Manual according to their Order number (e.g., Order #45).

### Information Regarding the Manual

This Manual has been prepared by the Freedom of Information and Privacy Branch of Management Board Secretariat. Revisions and amendments to the Manual will be made periodically, as required.



For information concerning the Manual, contact the:

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Management Board Secretariat  
18th Floor, 56 Wellesley Street West  
Toronto, Ontario  
M7A 1Z6**

**Telephone: (416) 327-2187**

**Fax : (416) 327-2190**

Questions concerning how specific provisions discussed in the Manual are to be applied within a particular ministry or agency can be directed to the Coordinator responsible for freedom of information and privacy matters in that institution.

### **Ministry/Agency Procedures**

Guidelines developed by a ministry or agency which set out procedures unique to that institution can be inserted at the tab entitled *Ministry/Agency Procedures*.













# Introduction to the Act





# Introduction to the Act

## Purpose of the Act

[Section 1]

The Freedom of Information and Protection of Privacy Act provides a person with a legal right of access to certain records and personal information under the control of institutions covered by the legislation.

The purposes of the Act are as follows:

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
  - information held by institutions should be available to the public,
  - necessary exemptions from this general right of access should be limited and specific, and
  - decisions on the disclosure of government information should be reviewed independently; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions, and to provide individuals with a right of access to that information.

## Organization of the Act

The short title of the Act is the Freedom of Information and Protection of Privacy Act (section 73). The Act came into force on January 1, 1988 (section 72).

The Act is divided into five parts as follows:

*Part I: Administration* This covers administrative details with respect to the Responsible Minister and the Information and Privacy Commissioner.

*Part II: Freedom of Information* This concerns the right of access, the exemptions to that right, access procedures and the information to be published or available to assist in locating information.

*Part III: Protection of Individual Privacy* This concerns the collection, retention, use and disclosure of personal information and personal information banks. An individual's right of access to personal information and to correction of that information are considered.

*Part IV: Appeal* This addresses the right to and the process of appeal.

*Part V: General* This covers general matters including fees, offences, regulations and the powers and duties of the Commissioner.

## Scope of the Act

All ministries of the Ontario government are covered by the legislation. In addition, any agency, board, commission, corporation or other body designated as an "institution" in the regulations is covered.

The term "institution" is defined in section 2 of the Act and is set out in the *Definitions* section of this chapter.

The legislation applies to any record in the custody or under the control of an institution, whether it was produced before or after the Act came into force (section 70).

The Act binds the Crown (section 71).

The Act does not apply to:

- records placed in the Archives of Ontario by or on behalf of a person or organization other than an institution (subsection 65(1)). This includes private donations of manuscripts and letters;
- records of a patient in a psychiatric facility as defined by clause 1(p) of the Mental Health Act where the record is a clinical record as defined by clause 29(1)(a) of the Mental Health Act, or contains information on the history, assessment, diagnosis, observation, examination, care or treatment of the patient (subsection 65(2));

- notes for the personal use of a presiding judge (subsection 65(3)).

The Act does not impose any limitation on the information otherwise available by law to a party to litigation. Where an institution is required to produce documentary evidence pursuant to rules of court, the exemptions in the Act have no application (subsection 64(1)). The existence of codified rules which govern the production of documents in other contexts does not necessarily imply that a different method of obtaining records under the Freedom of Information and Protection of Privacy Act is unfair (Order #48).

The Act and its exemptions do not operate in a way which would deny access to information through other legal rules or principles, including the rules of natural justice and the requirements of the Statutory Powers Procedure Act. At the same time, the Freedom of Information and Protection of Privacy Act has introduced a new scheme for access to information and protection of privacy which must be implemented by all institutions, including designated administrative tribunals (Order #45).

The Act does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of a document (subsection 64(2)).

Not all requests for information need to be made under the Act. Information can be provided in response to an oral request or in the absence of a request, where an institution may give access to that information under the Act (subsection 63(1)). The Act should not be applied to preclude access to information (except personal information) that was available by custom or practice before the Act came into force (subsection 63(2)).

## Definitions

Certain terms are defined in the legislation and are listed in **bold** type in this section. In addition, other terms have been defined in the Manual for purposes of consistency of application by institutions when processing requests for access under the Act or implementing the privacy protection provisions.

**Control (of a record):** the power or authority to make a decision about the use of disclosure of the record.

**Custody (of a record):** the keeping, care, watch, preservation or security of the record. While physical possession of a record may not always constitute custody, it is the best evidence of custody.

**Directory of Records:** a publication which lists, for institutions covered by the Act,

- a) information on the general classes or types of records and manuals maintained by institutions (required pursuant to section 32 of the Act), and
- b) the personal information banks maintained by each institution (required pursuant to section 45 of the Act).

**Disclosure (of personal information):** to view, to make known, to reveal.

**Head:** in respect of an institution, means,

- (a) in the case of a ministry, the minister of the Crown who presides over the ministry, and
- (b) in the case of any other institution, the person designated as head of that institution in the regulations (subsection 2(1)).

For institutions other than ministries listed in the regulations, where no Head is designated in respect of an institution, the minister responsible for that institution shall be deemed to be the head of that institution (subsection 2(5)).

**Individual:** a human being; it does not include a corporation. (See definition of person on page 1-4).

Any right or power conferred on an individual by the Act may be exercised,

- (a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (b) where a committee has been appointed for the individual or where the Public Trustee has become the individual's committee, by the committee; and

**(c) where the individual is less than sixteen years of age, by a person who has lawful custody of the individual (section 66).**

The personal representative referred to in clause (a) is the executor named in a will or, where there is no will, the administrator appointed by a court to administer the estate of the deceased person.

In clause (b), a committee may be appointed by a court order for a person who is incapable of managing his/her own affairs. In addition, the Public Trustee may become an individual's committee as provided by the Mental Health Act or the Developmental Services Act.

The rights or powers which may be exercised on behalf of an individual include the right to make a request for access to a record, the right to consent to the use and disclosure of personal information under subsections 21(1)(a), 41(a) and 42(b), and the right to authorize personal information to be collected other than directly from the individual under subsection 39(1)(a).

*Information and Privacy Commissioner and Commissioner:* the Commissioner appointed under subsection 4(1) (subsection 2(1)).

The Commissioner is the official appointed on the address of the Legislature to review independently complaints resulting from the application of the Act and to exercise the powers and perform the duties prescribed by the Act.

***Institution:***

- (a) a ministry of the Government of Ontario,**
- (b) any agency, board, commission, corporation or other body designated as an institution in the regulations (subsection 2(1)).**

***Law Enforcement:***

- (a) policing,**
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and**
- (c) the conduct of proceedings referred to in clause(b) (subsection 2(1)).**

There are three parts to the definition. Part (a) encompasses the activities of police forces. These activities include the investigation and prosecution of offences, the collection and analysis of intelligence information, the prevention of crime, the maintenance of law and order and the provision of security and protective services. This part does not apply to an internal employment-related investigation for breach of contract (Order #157).

Part (b) of the definition includes activities by an institution to enforce compliance with standards, duties and responsibilities set out in a statute or regulation. Many institutions have a branch which is responsible for the enforcement of statutes administered by the institution.

In part (b), the words "lead or could lead" indicate that inspections and investigations are part of *law enforcement* even if they do not actually result in proceedings in a court or tribunal.

***For example:***

The result of an investigation to determine whether an offence has been committed under the Environmental Protection Act may be that there is insufficient evidence of an offence and therefore no charge should be laid. The investigation would still come within the definition of law enforcement.

Part (b) refers to proceedings where a "penalty or sanction" could be imposed in those proceedings. This includes the imposition of imprisonment or a fine, the revocation of a licence and the issuance of an order requiring a person to cease an activity. A civil action for monetary damages or recovery of a debt, as well as internal employment-related investigations where a tribunal could hear the matter *only* at the instance of the employee would *not* be included (Order #157).

Part (c) of the definition refers to the actual conduct of proceedings before a court or tribunal.

***For example:***

Prosecution of an offence under the Criminal Code and the conduct of a hearing before a regulatory tribunal such as the Ontario Securities Commission are included.



Investigations into complaints under the Ontario Human Rights Code are also included (Order #89).

**Person:** the term refers to an individual and also a corporation.

**Personal Information:** recorded information about an identifiable individual, including, but not limited to:

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation, or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual, or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual (subsection 2(1)).

**Personal information does not include information about an individual who has been dead for more than thirty years (subsection 2(2)).**

Personal information is information which relates to a specific individual whose identity can be ascertained from that information. Corporations, partnerships, and sole proprietorships are not considered individuals. However, records containing information about these business entities

may contain personal information about individuals.

Personal information also includes opinions and views.

*For example:*

If A expresses an opinion about B, that opinion is part B's personal information. Other views or opinions, which are not about an individual, are the personal information of the individual who has expressed the opinion.

An opinion expressed by an individual on behalf of an organization is the information of the organization; it is not the personal information of the individual.

*For example:*

If individual A communicates or expresses an opinion on behalf of organization or corporation B, such opinion is not the personal information of A, but rather it is information about corporation B.

**Personal Information Bank:** a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual.

A personal information bank would have the following characteristics:

- contains personal information;
- contains a collection of like/similar information;
- the information is linked to an identifiable individual; and
- the information is organized and capable of being retrieved by a personal identifier.

Usually a personal information bank supports the delivery of a program and is used in reaching decisions that affect individuals listed in the bank. A number of personal information banks can support one program.

Institutions will also have collections of records which contain personal information, but which fail to meet the criteria listed above, and so would not be considered personal information banks (e.g., records of purchase orders or general correspondence).

**Public Interest:** the interest of the public in general, not of any individual or group of individuals.

The interest may be a pecuniary one or one by which legal rights or liabilities are affected. It may be an interest in public health or safety or an interest in the maintenance of confidence in the conduct of government or in the administration of an institution.

**Record:** any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations (see page 3-6), any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution (subsection 2(1)).

The definition is broad, and includes virtually every form of information held by an institution.

**Regulations:** the regulations made under the Act (subsection 2(1)).

**Requester:** a person making a request under the Act. (See definition of person).

**Responsible Minister:** the minister of the Crown who is designated by order of the Lieutenant Governor in Council under section 3 (subsection 2(1)).

The Responsible Minister is the Chairman of the Management Board of Cabinet.

**Third Party:** any person whose interest might be affected by disclosure other than the person making a request for access. Where the third party is an individual, his/her rights may in some cases be exercised by another person in accordance with the definition of

“individual”.

**Use (of personal information):** to take action, to employ, to put to use.









# Administration of the Act





# Administration of the Act

## Introduction

The Freedom of Information and Protection of Privacy Act contains administrative requirements which must be undertaken by each institution. In many instances, the Act specifically identifies the Head of the institution as responsible for compliance. The administrative requirements relate to the following general areas:

- responding to requests for access to records;
- protecting personal privacy;
- providing specific information to the Information and Privacy Commissioner and the Responsible Minister; and
- making information available to the public.

The Act also sets out the duties of the Responsible Minister who has overall administrative responsibility for the Act. The Management Board of Cabinet has issued a directive on Freedom of Information and Privacy which specifies the mandatory requirements and responsibilities of institutions administering the Act.

This chapter provides an overview of the administrative responsibilities which rest with the head of an institution and with the Responsible Minister. The requirement to make available to the public directories, manuals and annual reports is also considered. The coordination role which must be undertaken within each institution is then discussed.

## Head of the Institution

The Head of the institution is responsible for any decisions made under the Act on behalf of the institution, and for overseeing the ongoing administration of the Act within the institution. This responsibility includes compliance with the access provisions of the Act while at the same time ensuring that personal information held by the institution is accurate and up to date and is collected and used/disclosed only as authorized. The Act specifically identifies those circumstances where information must be disclosed or access refused, and those cases where the head may exercise discretion.

## Internal Administration

The Head has certain responsibilities pursuant to the legislation, including:

- adhering to time limits and notification requirements;
- considering representations from third parties;
- providing a response to access requests;
- determining the method of disclosure;
- responding to requests for correction of personal information;
- calculating and collecting fees;
- providing access by the public to manuals and guidelines prepared by the institution; and
- where necessary, defending decisions made under the Act at an appeal.

The Head also has an obligation to include in a personal information bank all personal information under the institution's control which is organized or intended to be retrieved by an individual's name or by an identifying number or symbol (section 44).

The Head must also retain a record of any use by the institution of personal information in a personal information bank and any new use/disclosure not specified in the Directory of Records. This new use/disclosure must be recorded and attached to the personal information (subsection 46(1)).

When personal information is used/disclosed on a regular basis for a purpose not listed in the Directory of Records, the Head must ensure that this use/disclosure is included in the next edition of the Directory (subsection 46(3)).

## Reporting Requirements

The Head is responsible for providing certain information to the Commissioner and to the Responsible Minister.

Section 34 specifies that the Head must provide the Commissioner with an annual report which sets out the following:

- the number of access requests received;
- the number of requests refused, the provisions of the Act relied upon for refusal and the number of times each provision was invoked;

- for each provision of the Act, the number of appeals commenced;
- the number of times personal information was used or disclosed for a purpose which is not in the Directory of Records;
- the amount of fees collected under section 57; and
- any other information indicating an effort by the institution to put into practice the purposes of the Act.

In addition, under section 36, the Head must provide the Responsible Minister with the information that the Responsible Minister needs to prepare the publications required by sections 31, 32 and 45 of the Act. This information includes:

- the location where a request for a record should be made;
- the location of manuals, directories and other material available for public use;
- the location of any institution library or reading room available for public use;
- a description of the institution, its programs and its functions;
- a list of the types of records held by the institution;
- the name, title, business address and telephone number of the head; and
- the information in and concerning the institution's personal information banks

Whenever personal information is used/disclosed on a regular basis for a purpose not listed in the Directory of Records, the Head must notify the Responsible Minister forthwith of the use/disclosure (subsection 46(3)).

## Delegation of Authority of Head

The powers or duties of the Head may be delegated in writing to an officer or officers of the institution subject to any limitations, restrictions, conditions and requirements set out in the written delegation of authority (subsection 62(1)). The Head remains accountable for actions taken and decisions made under the Act.

All of the powers and duties of the Head can be delegated. They are as follows:

<i>Section/ Subsection</i>	<i>Power/Duty</i>
10(2)	Severability of record
11	Obligation of disclose
12	Cabinet records
13	Advice to government
14	Law enforcement
15	Relations with other governments
16	Defence
17	Third party information
18	Economic interests of Ontario
19	Solicitor-client privilege
20	Safety/health of individual
21	Personal privacy
22	Information soon to be published
25	Transfer of requests
26	Notice and access
27	Time extension
28	Third party notice
29	Notice of refusal
30(2)	Access to original record
33	Documents available
34	Annual report
35(2)	Manuals, etc., to be available in reading room
36	Information available to Responsible Minister
39(2)	Notice of collection to individual
40(2)	Accuracy of personal information
40(4)	Disposal of personal information
44	Personal information banks
46	Record retention
48	Access to personal information
49	Personal information exemptions
52(6)	Examination of record by Commissioner
57	Fees

## Responsible Minister

The Lieutenant Governor in Council may by order designate a minister of the Crown to be the Responsible Minister (section 3). The Responsible Minister administers the Act.

The Responsible Minister is required to:

- publish annually the Directory of Institutions, a compilation listing all institutions, including information on where requests can be made and the location of each institution's library or reading room (section 31);

- publish annually a Directory of Records, an indexed listing of general records (section 31) and personal information banks (section 45); and
- make the Directories available to the public.

The Responsible Minister makes available an instructional package on the preparation of the material for the Directory of Records.

The Responsible Minister also prescribes forms and prepares training packages and other products, including this Manual, to support the implementation of the Act.

The Lieutenant Governor in Council may make regulations with respect to a number of matters (section 60). The regulations are prepared by the Responsible Minister.

The approval of the Responsible Minister is required where the head requests a waiver of notice to an individual of the legal authority and purpose of collection of personal information (subsection 39(2)).

The Responsible Minister can issue directives for the disposal of personal information (subsection 40(4)). A regulation concerning the disposal of personal information has been issued (O.Reg. 15/89).

## Documents Available to Public

[Section 35]

Subsection 35(1) provides that the Responsible Minister must make available to the public generally and in the reading room, library or office designated by each institution the following materials:

- the Directory of Institutions (section 31);
- the Directory of Records (sections 32 and 45);

Subsection 35(2) provides that the Head must make available to the public in the institution's library, reading room or designated office:

- the manuals, directives or guidelines prepared by the institution which are issued to its officers and contain interpretations of the provisions of any enactment or scheme administered by the institution (subsection 33(1)(a));

- the instructions and guidelines for officers of the institution in the procedures, methods or objectives in administering or enforcing the provisions of any enactment or scheme administered by the institution that affects the public (subsection 33(1)(b)); and
- the annual report to the Information and Privacy Commissioner (section 34).

The manuals, directives or guidelines that must be made available are those prepared and used by an institution's staff to determine the eligibility of an individual for a program, changes in status or the imposition of new conditions affecting an individual in a program, or the imposition of obligations or liabilities on an individual under a program.

The requirement to make administrative instructions and guidelines available to the public covers virtually every aspect of procedures, methods or objectives of any program that affects the public.

Manuals and other materials which relate only to the internal operation and administration of the institution, and do not affect the public, need not be included. This would cover instruction manuals for the operation of equipment or the procedures to follow when ordering office supplies.

Guidelines and manuals of administration are subject to the same exemptions to the requirement to disclose information as other records. Portions can be severed if they are exempt from disclosure under the Act. Any deletion must include a statement that a deletion has been made, the nature of the information deleted and the provision of the Act authorizing the deletion (subsection 33(2)).

Other materials, not required by the Act, which might be helpful in a reading room include:

- Freedom of Information and Protection of Privacy, Human Resources Guidelines, issued by the Human Resources Secretariat;
- record retention schedules;
- file plans;
- the institution's annual report; and
- listings of publications.



## Freedom of Information and Privacy Coordinators

Each institution has designated a Coordinator responsible for the coordination of activities related to the legislation.

The role and the responsibilities assigned to the Coordinator will vary according to the size and organization of the institution. The delegation of authority for decisions relating to the legislation will also be a factor in determining the Coordinator's responsibilities. Although the specific duties will vary considerably from institution to institution, the responsibilities of the Coordinator may include coordination in the following areas:

- developing policy recommendations on issues related to the legislation;
- developing and monitoring procedures for the administration of the Act, including the tracking of requests, statistical reporting and ensuring adherence to legislative requirements;
- training and orientation of staff;
- consultation with line and senior management and legal advisors on the interpretation and administration of the legislation;
- collecting information for the institution's entries in the Directory of Records;
- liaison with the office of the Responsible Minister, the Office of the Information and Privacy Commissioner and other institutions and central agencies;
- making decisions on requests under the Act (on the delegated authority of the Head); and
- consultation and support related to the Act for agencies associated with the Ministry.

## Security and Confidentiality of Records

Section 60(d) of the Act provides a power to make a regulation "setting standards for and requiring administrative, technical and physical safeguards to ensure the safety and confidentiality of records and personal information under the control of institutions".

O. Reg 516/90 requires institutions to ensure that reasonable measures to prevent unauthorized access to the institution's records are defined, documented and put in place, taking into account the nature of the records. The Regulation applies to access and security considerations in the day-to-day administration of an institution's records, rather than access to records in response to requests under the Act.

Factors to consider in determining whether access to records should be controlled, and the scope and extent of those controls, include:

- whether or not exemptions are likely to apply to the records;
- the nature of the exemptions (mandatory or discretionary) which may apply;
- the circumstances under which the records were supplied to or created by the institution;
- possible harms which may result from unauthorized access;
- the need to protect the record from tampering; and
- the need to protect unique or original records.

Determining appropriate levels of access would usually be on the basis of record series, that is, logical groupings of records which can be considered as functional units.

In identifying security measures, institutions should balance the cost and complexity of such measures against the possible harms resulting from unauthorized access. Security measures should be appropriate to the nature of the record and to the level of security required. Examples of security measures which might be considered include:

- assigning responsibility and accountability for safeguarding security and confidentiality;
- clean desk policies, where desks are locked when unattended;
- locking filing cabinets or file rooms, which are locked when unattended and where key distribution is limited and documented;
- file or container labels using numeric or alphanumeric codes rather than descriptive texts;



- policies and procedures for using facsimile machines, including policies on types of information which should not be faxed, and staff access to and physical placement of the fax machine. The Office of the Information and Privacy Commissioner has prepared guidelines on the use of facsimile machines which can be consulted;
- positioning terminals in such a manner that passers-by cannot read information displayed on screen;
- password protection for data files, with policies governing the assignment, use and deletion of passwords; and
- encryption of transmitted data.

Institutions should also include security provisions in contracts with outside suppliers of information processing, storage or disposal services.

O.Reg 516/90 also requires that each institution ensure that only those individuals who need a record for the performance of their duties shall have access to it. In other words, internal access to records is on a "need-to-know" basis. In most cases, the institution would determine which groups of staff need to have access to a particular class of records in the performance of duties, and take steps to ensure that access is limited to those groups. This provision is not limited to staff of the institution but to individuals who need a record for the performance of their duties.

O.Reg 516/90 also requires each institution to ensure that reasonable measures to protect the records in his or her institution from inadvertent destruction or damage are defined, documented and put in place, taking into account the nature of the records to be protected. If records are inadvertently destroyed before their proper disposal date, as specified on a retention schedule, requesters are deprived of their right of access under the Act to those records. The head must take all reasonable steps to protect the institution's records from such inadvertent destruction.

In determining what are reasonable steps, the head should consider all relevant factors, including:

- the media of the record. Protective measures appropriate for paper records, for instance, may not be appropriate for other media;
- whether copies of the record exist;
- whether the original copy of the record is inherently valuable (such as archival records or signature documents);
- how vital the record is to the functions of the institution;
- the cost of replacing or recreating the record; and
- the cost of available protective measures.

Although measures to protect records from inadvertent destruction will vary among institutions, some common steps which might be considered include:

- making regular back-up copies (disks, photocopies, microfilm), with a copy stored at a site separate from the original or working copy;
- using fire-resistant file cabinets;
- locating record storage/computer operations away from areas where fire or water damage is more likely (away from exposed pipes);
- raising records and records-processing equipment off the floor to prevent flood damage;
- installing smoke detectors and fire-extinguishing equipment. It should be noted, however, that some automatic fire extinguishing systems (such as water sprinklers) may themselves pose a hazard to records and computers; and
- ensuring that storage facilities and maintenance regimes are appropriate to the record's media. Magnetic media, for instance, are especially vulnerable to inadvertent destruction or damage through improper storage. Similarly, because magnetic media is often tied to a particular operating system and set of hardware, data stored on that media may not be usable if the operating system or hardware is no longer available.

As with other measures, steps to ensure against inadvertent destruction should be documented by the institution.

## **Standing Committee**

### **Review of Acts**

Subsection 67(1) provides that the Standing Committee on the Legislative Assembly shall undertake a comprehensive review of all confidentiality provisions contained in Acts in force on January 1, 1988. (See page 4-31 concerning confidentiality provisions).

### **Review of Freedom of Information and Protection of Privacy Act**

Prior to January 1, 1991, the Standing Committee on the Legislative Assembly must undertake a comprehensive review of the Freedom of Information and Protection of Privacy Act. Within one year of beginning that review, the Committee is to make recommendations to the Legislative Assembly regarding amendments to the Act (section 68).

## **Public Service Act Oath**

The oath that every civil servant is required to take pursuant to subsection 10(1) of the Public Service Act is amended to make it clear that no civil servant will be in breach of the oath because he/she gives access to a record as authorized by the Freedom of Information and Protection of Privacy Act (section 69).







# Access to Information



# Access to Information

## Introduction

The requirements for providing access to a record in accordance with the Freedom of Information and Protection of Privacy Act are addressed in this chapter. The obligation of the Head to disclose a record where there has been no request, the right of access to general information and the procedures for processing requests for access under the Act are discussed. The special requirements that apply to requests for personal information and to requests for correction of personal information are considered. The procedures to be followed in notifying the requester of decisions reached and in notifying third parties are also outlined.

## Obligation to Disclose

[Section 1]

Under subsection 11(1), the Head of an institution has an obligation to disclose any record – either to the public or to the persons affected – where the record reveals a grave environmental, health or safety hazard to the public. The Head must have reasonable and probable grounds to believe that this hazard exists, and that release of the record is in the public interest. If these conditions are met, the record must be disclosed “as soon as practicable”, that is without unreasonable delay.

In this section, “grave” means serious, likely to produce great harm or danger.

“Public interest” is defined on page 1-5.

This section overrides every other provision of the Freedom of Information and Protection of Privacy Act. There is no requirement that a request be made before the duty of the Head to disclose arises.

Subsection 11(2) provides that before disclosing a record, the Head must give notice to any person to whom information in the record relates if it is practicable to do so. A “person to whom the information relates” includes a third party who will be affected by the release. Whether it is “practicable” to give notice will depend on feasibility and timing in the particular circumstances.

The Head must weigh any harm that delay in disclosure would create against any possible unfairness to the person to whom the information in the record relates.

The notice indicates that the Head intends to release a record or part of a record that may affect the interests of the person and a description of the record or part relating to the person. The notice also states that the person may make representations forthwith to the Head why the record or part should not be disclosed (subsection 11(3)).

Subsection 11(4) provides that where notice is given, the person may make representations forthwith to the Head concerning why the record or part should not be disclosed. “Forthwith” means immediately. Due to the urgency of the circumstances contemplated by this section, the head is not required to wait for any prescribed period of time before disclosing. There is no provision for an appeal to the Information and Privacy Commissioner. The notification envisaged by this section is much more informal than the third party notification procedure set out in section 28. The requirement to give notice could be fulfilled by telephoning the person to whom the record relates.

## Right of Access

[Subsection 10(1) and Sections 47 and 63]

The Act establishes a general right of access to a record or a part of a record in the custody or under the control of an institution unless the record, or the part of the record, falls within one of the exemptions in sections 12 to 22 (subsection 10(1)). As a general rule, therefore, every record is to be made available unless it falls within one of the exemptions specified in the legislation. The exemptions are discussed in Chapter 4.

The right of access is not restricted by residency or citizenship.

In addition, subsection 47(1) provides an individual with a legal right of access to personal information about him/herself. The right of access to personal information is also subject to the exemptions discussed in Chapter 4.

The legislation allows the Head of an institution to release information voluntarily in the absence of a request, or in response to an oral request, pro-

vided that nothing in the Act prohibits the release of that information (subsection 63(1)). Access to information (except personal information) that was available by custom or practice immediately before the Act came into force is preserved (subsection 63(2)).

The French Language Services Act does not require the translation of a record in response to a request covered by the Freedom of Information and Protection of Privacy Act. It does require that any communications with the requester, including notifications, be made in the language of the request (French or English).

## Severability

[Subsection 10(2)]

Where part of the record requested falls within one of the exemptions, but other information in the record can be disclosed, the Head must disclose as much of the record as can reasonably be severed without disclosing the information which is exempt.

Generally, the smallest unit of information to be disclosed after severing is a sentence. But even where only a sentence remains, some information, such as a name, might be removed and the remainder released.

Severability does not apply where the legislation specifically exempts an entire class of records such as a Cabinet agenda (section 12(1)). In most cases, however, the information in a record must be assessed to determine whether portions are severable.

One method of severing would be to blank out the exempt information from a photocopy of the record, and release a copy of the severed photocopy to the requester. Alternatively, removable white tape could be put over the exempt portions of the record, and a photocopy made for release to the requester. A copy should be made and retained by the institution before the tape is removed.

When information is severed from a record, the notification to the requester must specify the section(s) of the Act under which access to the severed information is refused. One way to accomplish this notification is by inserting the subsection number in the space remaining after

the information has been severed from the record.

## Notification

Each decision made during the course of processing a request for access to or correction of a record requires written notice to the requester. In some cases, notice to a third party is required. The notice must indicate decisions taken and the sections of the Act under which those decisions were made.

When an institution, without seeking clarification from the requester, chooses to narrow its area of search based on its interpretation of the request, the institution should inform the requester of the specific areas of search undertaken (Order #33, #34, #35).

The sample notification letters that are referred to in this chapter are found in Appendix III.

## Access to General Records

### Request for General Records

[Subsection 24(1)]

The Act imposes two conditions on requests for a record:

- the request must be in writing; and
- the request must provide enough details about the information to enable an experienced employee, upon a reasonable effort, to identify the record.

A request under the Act for access to general information will normally be made using the *Request for Access to Record* form prescribed by regulation. Written requests for access which make reference to the Act, but are not on a prescribed form, are also treated as requests under the Act.

If an institution receives a request for information that exists in a recorded format which is different from the format asked for, an institution must identify and advise the requester of the existence of the related records (Order #50).

Where information can be produced from an existing machine readable record, and producing the record will not unreasonably interfere with



the operations of the institution, an institution must locate and produce the information in the requested format (Order #50).

### Further Information Required

[Subsection 24(2)]

A request may not sufficiently describe the record sought and may therefore require further detail before it is considered a "complete request". The institution should notify (see notification no. 1) or telephone the requester and offer assistance in reformulating the request to identify the general class or type of record and the institution with custody or control of the record.

The following sources of information may help in locating records:

- the Directory of Records published by the Responsible Minister;
- staff of the Responsible Minister;
- the Coordinator responsible for freedom of information and privacy matters in the institution likely to have the record.

### Request for Continuing Access

[Subsections 24(3), (4) and (5)]

A requester may indicate in a request for access to records that it shall, if granted, continue to have effect for a specified period of up to two years (subsection 24(3)). This does not apply to a request by an individual for personal information about him/herself under sections 47 and 48.

If access to the record sought is granted, the institution provides the person with a proposed schedule of dates for disclosure. The schedule indicates why the particular dates were selected. The schedule also contains a statement that the requester may ask the Commissioner to review the schedule (subsection 24(4)).

*For example:*

A requester may be granted access to a report and request any updates to the report over the next year. If the report is quarterly, a quarterly schedule for disclosure would be proposed to the requester.

Continuing access is contemplated for records which are likely to be produced and/or issued in

series. It is not intended to provide ongoing access to the kind of records of which only one edition is produced (Order #164).

In dealing with this type of "continuing request", the Act applies as if a new request were being made on each of the dates in the schedule (subsection 24(5)). In practical terms, the original request is brought forward on each of the dates listed in the schedule and processed as if it were a request made on that day.

If the access request is denied, there is no obligation to grant continuing access.

## Custody or Control and Forwarding Request

[Subsection 25(1)]

The right of access is to a record or part of a record in the custody or under the control of an institution. As set out in the Definitions section of this Manual, "custody" means the keeping, care, watch, preservation or security of a record, which typically entails possession of a record. "Control" is the authority to make a decision on the use and disclosure of a record.

In this section "institution" includes all bodies covered under the Municipal Freedom of Information and Protection of Privacy Act.

There are no precise definitions of the terms "custody" or "control". An institution must consider all aspects of the creation, maintenance and use of particular records.

The following factors will assist in determining whether an institution has custody or control of a record. The list is not exhaustive, but it reflects the kind of considerations that institutions should apply in determining questions of custody or control (Order #120):

- Was the record created by an officer or employee of the institution?
- What use did the creator of the record intend to make of the record?
- Does the institution have possession of the record; was the record voluntarily provided by its author or does the institution possess the record because of a mandatory statutory requirement?

- If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purpose of his or her duties as an officer or employee?
- Does the institution have a right to possession of the record?
- Does the content of the record relate to the institution's mandate and functions?
- Does the institution have the authority to regulate the record's use?
- To what extent has the record been relied upon by the institution?
- How closely is the record integrated with other records held by the institution?
- Does the institution have the authority to dispose of the record?

An institution cannot be said to have control of a record where copies of the record can be obtained independently of the institution. Where an institution does control the production or distribution of a record, that is sufficient to establish "control" within the meaning of section 10(1) (Order #52).

*For example:*

Records at the Archives of Ontario are in the custody and control of the Archives of Ontario.

Constituency records of a minister are not in the custody or control of a ministry.

Records produced by Crown counsel employed by the Ministry of the Attorney General but working as legal counsel to an institution are in the custody and control of the institution.

In some cases requests for information will be sent to an institution which does not have the record either "in its custody" or "under its control". When such a request is received, the institution has an obligation to:

- determine if another institution has either custody or control of the record;
- if so, forward the request to that institution; and
- give written notice (see notification no. 1) to the requester of the transfer.

These actions are to be taken within 15 calendar days of the date a "complete request" is received.

In this context, "forward" means to send the request to what should have been the original destination.

### **Transfer of Request and Greater Interest** [Subsections 25(2) and (3)]

Once custody and control are decided, the institution might determine that another institution has a greater interest in the record. Subsection 25(2) provides that another institution has a "greater interest" in a record than the institution that received the request if:

- the record was originally produced in or for that institution; or
- in cases where the record was not originally produced in or for an institution, the other institution was the first to receive the record or a copy.

*For example:*

Records in a records centre are in the custody of the centre, but the institution which sent them to the record centre has a "greater interest".

The Ministry of Government Services may have custody of records to provide computer processing, but a "greater interest" in those records resides with the client institution.

Where another institution has a greater interest, the request and if necessary the record, may, but need not, be transferred to that institution. If transferred, it should be with the prior agreement of the receiving institution. "Transfer" in this context means giving the other institution with the greater interest the access request so it becomes responsible for responding.

An institution has up to 15 calendar days from the date of receipt of a "complete request" to transfer the request. The Head transferring the request must give written notice of the transfer to the requester (see notification no. 1).

In considering whether a request should be transferred to another institution, the existence of a discretionary exemption (see page 4-1) is relevant. The discretion may be more appropri-

ately exercised by the institution which has the greater interest because of that institution's knowledge of the record.

### **When Forwarded/Transferred Request Deemed Made**

[Subsection 25(4)]

The institution receiving the request forwarded or transferred under subsection 25(1) or (2) is deemed to have received the request on the date the forwarding or transferring institution originally received it.

The institution forwarding or transferring a request should retain documentation to show its actions prior to the transfer.

### **Time Limits**

[Section 26]

Within 30 calendar days after a "complete request" is received, the Head must give written notice to the requester concerning whether or not access to the record or a part thereof will be given (subsection 26(a)). The time limit is a maximum; a faster response may be possible.

### **Where Access Granted**

[Subsection 26(a) and (b)]

Notice to the requester and access to the record is provided within 30 calendar days. This means that the notice should be received by the requester before the 30 days have run. There will be a record of the date of receipt by the requester if the notice is sent by certified mail or by courier. Where necessary for the purpose of giving access, the record should be produced within the 30 days (see page 3-6).

### **Deemed Refusal to Grant Access**

[Subsection 29(4)]

If the requester is not advised within 30 calendar days of the Head's decision under section 26, the Head is deemed to have refused access, and the requester may appeal to the Information and Privacy Commissioner. This deemed refusal also applies to a time limit for a decision under subsection 28(7) after a third party has made representations.

### **Where Fee Estimate**

[Section 57]

In processing a request, it may become clear that fees will be involved. If it appears that the costs of processing the request will be over \$25.00, the requester must be given a fee estimate before the Head gives access to the records unless fees are to be waived [section 57(3)]. Section 26, however, requires the Head to notify the requester within 30 days of his or her decision regarding access to the requested records. In other words, both the fee estimate notice and a notice of decision on access must be issued within the 30-day period (unless there has been a time extension or a third party notice issued). This can be handled in two ways:

- In most cases, it will be a relatively straightforward matter for the institution to review the records and provide the requester with both a detailed fee estimate and a section 26 decision about the disclosure within the 30 day period. In many cases, the fee estimate amounts to the same as a final fee statement. While the record would be reviewed and an access decision made, no records would be severed, copied, or released until the fee is paid or waived.
- There may be cases where it would be unduly expensive for an institution to gather and review the records to make a decision before a fee estimate is agreed to and a deposit paid. There may be, for instance, requests involving large volumes of records or records housed in a variety of locations.

In such a case, the Head provides the requester with a notice containing an interim decision about access under section 26 and a fee estimate under section 57(2). The decision on access is an "interim" decision because the Head will not yet be in a position to fully determine whether and how exemptions will apply. Both the interim decision and the fee estimate are based on one of the following methods:

- consulting with an employee of the institution who is familiar with the type and contents of the records; or
- basing the interim decision and fee estimate on a representative (as opposed to random) sampling of the records.



The interim decision lets the requester know that certain exemptions may apply to the records. Since this is not a final decision, it is not binding on the institution and is not subject to appeal. The fee estimate, however, may be appealed [(section 50(1)).

The time period for responding to a request is suspended after the notice containing the decision (interim or final) and fee estimate is issued. The time begins to run again once the institution receives the fee payment or a deposit from the requester or the Head grants a fee waiver, or the issue of fees has been resolved after an appeal to the Information and Privacy Commissioner.

In all cases, the fee estimate should be based on an examination of the records and should provide the requester with as much information as possible about the costs that will be incurred in processing the request. The estimate should also indicate that the requester may ask for a fee waiver. (See Order #81 regarding fee estimates)

### **Where Third Party Affected**

[Sections 26 and 28]

The time limit for responding to a request is automatically extended where notice is given to a third party under subsection 28(1). The time for responding to the request will be governed by the provisions of section 28.

### **Extension of Time**

[Subsection 27(1)]

Subsection 27(1) provides that a Head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where:

- the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the institution's operations. Note that an interference with operations posed by meeting the time limit is not an independent ground on which to base a time extension. An extension can only be claimed if the request is for a large number of records or necessitates a search through a large number of records *and* meeting the time limit would be an unreasonable interference; or

- consultations that cannot reasonably be completed within the time limit are necessary to comply with the request. Consultations in this context do not include consultations within an institution, but may include consultations between or among institutions.

An institution should consider all of the potential factors that may contribute to the need for and length of a time extension. The time limit in section 26 can only be extended once.

### **Notice of Time Extension**

[Subsection 27(2)]

Where a Head extends the time limit under subsection 27(1), the Head must give the person who made the request written notice (see Appendix III – notification no. 3) of:

- the length of the extension;
- the reason for the extension; and
- the fact that the requester may ask the Commissioner to review the extension.

Where possible, the notice of time extension should include some description of the records at issue. In providing its reasons for a time extension, an institution should indicate who is to be consulted and the topic of the consultation (Order #189).

### **Producing Record in Response To Request**

[Subsections 2(1) and 26(b)]

Under the legislation, the "record" which an institution may release includes the creation of a "new" record compiled from existing machine readable information.

As an example, an institution uses existing machine readable information to produce a report. The requester may ask for a different type of report using some of the same information. The legislation provides the requester with a legal right to the "new" record that is produced by manipulating existing machine readable information.

However, there are limitations on the requirement to generate such "new" records:



- the "new" record must be capable of being produced from existing machine readable information;
- the institution must be able to produce the "new" record using the computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; and
- any other limitations as prescribed by regulation. The regulations provide that a record capable of being produced from machine readable records is not included in the definition of "record" for purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

## Access to Original Record or Copy

[Section 30]

Subsection 30(1) provides that when access is given to a record, the requester is entitled to receive a copy of that record. However, the requester will be required to examine the original record, rather than receive a copy, where it would not be reasonably practicable to reproduce the record due to its size, length or nature. As a result of amendments to the federal "Copyright Act", Section 27(2)(i)(j), copies of copyrighted material may be provided in response to a request under the Freedom of Information and Protection of Privacy Act without infringing copyright.

Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to provide that opportunity, access to the original record should be provided (subsection 30(2)). It may not be reasonably practicable to provide access to the original record if parts of the record have been severed (Order #2), or if access to the original would compromise the security of the record.

Section 3(1) of O.Reg 516/90 requires that, once an institution decides that it is reasonably practicable to grant access to an original record, the institution must ensure the security of that record. In other words, the institution must then take reasonable steps to ensure that the record is not defaced, changed, destroyed or stolen as a result of granting access. An institution may

wish, for example, to have an employee present when access to the record is provided to the requester. In general, the nature of the security measures taken should be determined by the nature of the original record requested.

If the security of the original record cannot be ensured, it would not be reasonably practicable under section 30(2) of the Act to grant access to the original record. In such a circumstance, a copy of the record would be provided to the requester.

Under Section (3)(2) of O.Reg. 516/90, a Head has the discretion to require a person who is granted access to an original record to examine it at premises operated by the institution. When an institution has more than one premises (for example, regional or field offices), the Head also has the discretion to determine at which of the institution's sites access will be granted.

Factors to consider in exercising this discretion include:

- whether security of the record can be maintained while transporting the record or at a site other than where the record is located;
- whether access at another site would result in undue inconvenience or expense, or would compromise the operation of the institution;
- whether the record is in active use and needed on-site;
- whether there are legal requirements for maintaining the record on-site; and
- the volume, size or fragility of the records.

In exercising this discretion, the Head must assess the particular facts of each case before a decision is made.

### Delivery by courier cannot be made to a Post Office box

Where access to a record for viewing at an off-site location is reasonably practicable, the requester may agree to access a copy rather than an original. In such circumstances no fee should be charged to the requester for reproducing the original record (Order #6), though fees for other expenses listed in subsection 57(1) are appropriate.

Where access is granted to an original record, a requester may ask to select only portions of the

records for photocopying to minimize costs. The person should be given a copy of these portions, unless it would not be reasonably practicable to reproduce them due to their length or nature (subsection 30(3)).

## **Notice of Access**

[Section 26 and Subsection 24(4)]

When access to a record is granted, the requester is notified of the decision (see Appendix III – notification no. 4). If a copy of the record is being provided, it may be enclosed. If access is to be provided to an original record rather than a copy, the notice informs the requester of the time and place where the record can be seen.

Where a fee is charged, the requester is advised of the amount that he/she is required to pay before access is provided. The notice should state that the decision to charge a fee and the amount can be appealed to the Commissioner.

If a request involves continuing access, the schedule of dates should be attached to the notice. The notice states that the applicant may ask the Commissioner to review the schedule.

If the request is for access to personal information, identification may be required before access is provided.

## **Notice of Refusal of Access**

[Subsection 29(1)]

When access to a record is refused under section 26, or is only partially granted in the case of a “severed” record, the requester must be notified of the decision and the sections of the Act which justify that decision. The requester must also be notified when it is determined that the record sought does not exist.

The notification (see Appendix III – notification no. 5) must contain the following information:

- a statement that the record exists; or
- where the record exists, the specific provision of the Act under which access is refused and the reason the provision applies;
- the name and position of the person responsible for the decision; and
- that the requester may appeal the decision to the Commissioner.

The Head is required to provide a requester with information about the circumstances which formed the basis of the Head’s decision to deny access. In the end, the requester should be in the position to make an informed decision as to whether to seek a review of the Head’s decision by the Commissioner (Order #158).

## **Notice of Refusal to Confirm or Deny Existence of Record**

[Subsection 29(2)]

In certain circumstances, when the Head decides to refuse access, the Head may also refuse to confirm or deny the existence of the record as provided in subsection 14(3) (law enforcement) or subsection 21(5) (unjustified invasion of personal privacy).

The notification to the requester given under section 26 (see Appendix III – notification no. 6) contains the following information:

- that the Head refuses to confirm or deny the existence of the record;
- the provision of the Act on which the refusal is based (either subsection 14(3) or subsection 21(5));
- the name and office of the person responsible for making decision; and
- that the requester may appeal to the commissioner for a review of the decision.

## **Third Party Procedure**

### **Notice to Third Party**

[Subsections 28(1), (2) and (3)]

The two situations that require written notice to a third party, if the intent is to release a record, are:

- when the Head has reason to believe that the record may contain information referred to in subsection 17(1) that affects the interests of the third party; or
- when the record contains personal information that the Head has reason to believe would constitute an unjustified invasion of personal privacy if disclosed to the requester (subsection 21(1)(f)).

Notification gives the third party the opportunity to make representations respecting the proposed disclosure. If the Head can determine without representations from the third party that an exemption applies and the record will not be disclosed, notice to the third party is not required. If, however, the Head either intends to release the record or wishes to hear from the third party before determining whether an exemption applies, the Head gives written notice to the third party in accordance with section 28.

The notice to the third party (see Appendix III – notification no. 7) contains:

- a statement that the Head intends to release information that may affect the interests of the third party;
- a description of the information that relates to the third party; and
- a statement that the person may, within 20 days, make representations to the Head as to why the record or part should not be disclosed.

The notice must be received within the initial 30-day period after the request is received or within the extension of time allowed under subsection 27(1).

Where notice has not been provided to third parties, the Commissioner may, in an interim order, require the institution to provide notice (Orders #141,162,163).

### **Notice to Requester of Delay** [Subsection 28(4)]

A notice of delay is sent to the requester at the same time the notice is sent to the third party under subsection 28(1). The requester is notified (see Appendix III – notification no. 8) that :

- the record or part of it may affect the interests of a third party;
- the third party is being given an opportunity to make representations concerning the disclosure; and
- the Head will decide within 30 days whether or not to disclose the record.

### **Third Party Representations** [Subsections 28(5) and (6)]

The third party has 20 days after notice is given to make representations to the Head concerning why the record or part should not be disclosed.

Representations are made in writing, unless the Head permits them to be made orally. If oral representations are made, a record of the event should be retained by the institution.

Access requests for the third party representations made to the Head of an institution should be treated as general requests under subsection 24(1) of the Act (Order #78).

### **Time Limit for Decision on Disclosure** [Subsection 28(7)]

Within 30 days after notice of the opportunity to make representations on the disclosure of the record has been received by the third party but not before the earlier of:

- 21 days after the notice is received by the third party; or
- the day the response from the third party is received,

The Head must decide whether or not to disclose the record and must give written notice of the decision to the third party and the requester.

### **Decision to Grant Access (Where Third Party Affected)** [Subsections 28(8) and (9)]

When the Head decides under subsection 28(7) to grant access to a record that affects a third party after the third party has made representations, the Head's notices to the requester (see Appendix III – notification no. 9) and the third party (see Appendix III – notification no. 10) state that:

- a decision has been made to grant access (or partial access) to the record requested;
- the third party may appeal the decision to the Commissioner within 30 days after the notice is given; and
- if the third party does not appeal, the requester will be given access to the record after 30 days (Order #16).



The notice contains the date access will be given, so that the time is clear to both the third party and to the requester. Other arrangements for access may be included in the notice to the requester.

### **Decision to Refuse Access (Where Third Party Affected)**

[Subsection 29(3)]

When the Head decides under subsection 28(7) to refuse access to a record that affects a third party, the requester is notified (see notification no. 11) of the decision. If the decision is made after representations by a third party, the third party should be notified (see Appendix III – notification no. 12) at the same time. The notices state:

- the specific provision of the Act under which access is refused;
- the reason the provision applies;
- the name and office of the person responsible for the decision; and
- that the requester may appeal to the Commissioner for a review of the decision.

The third party notification process is charted on Figure II, page 3-14.

## **Access to Personal Information**

### **Request for Personal Information**

[Subsections 47(1)) and 48(1)]

The Freedom of Information and Protection of Privacy Act provides an individual with a right of access to his/her own personal information, whether or not the information is held in a personal information bank.

A request by an individual for access to his/her personal information must meet the criteria for a "complete request". (See page 3-3.) It must be in writing, and it should identify the personal information bank where the record is held, or otherwise identify the location information sought.

A request under the Act for access to personal information will normally be made using the *Request for Access to Personal Information* form prescribed by regulation. However, a written request for access which makes reference to the

Act is also treated as a request under the Act.

Information contained in a personal information bank is retrievable either by the name of the individual or by some other personal identifier. The Directory of Records, published in accordance with section 45 of the Act, will assist the individual in identifying the personal information bank that contains his/her information. If necessary, staff of the institution will assist individuals in identifying the appropriate personal information bank.

Where the personal information requested is not contained in a personal information bank, the individual must provide sufficient information to enable an experienced employee to locate and retrieve the information. The responsibility for ascertaining the nature or whereabouts of a record of personal information lies on both the requester and the institution (Orders #33, #34, #35). This does not mean that the individual is expected to identify the name of a specific record containing the personal information, but rather that he/she will provide information such as dates, topic or issue from which the information can be located.

*For example:*

An institution may have correspondence files relating to particular issues which contain some personal information, for example, names and addresses, about a number of individuals who have written the institution on those issues. This information is not part of a personal information bank since it would not be retrievable by the individual's name or any other personal identifier. The individual would have to provide the institution with sufficient information, such as the date a letter was written and the issue, to assist in locating the information.

### **Identification Required for Access**

Section 3(3) requires a Head to verify the identity of a person seeking access to his or her own personal information before giving the person access to it. This can be done by various means. For example, the institution can compare identifying information on the written request with information in the institution's possession. The requester's handwriting, signature, address and telephone number as well as the spelling of names can be compared with information the institution may have on file. An



institution can also question the requester about unique information that might be contained in the record.

If the requester wishes to examine the personal information in person, proper identification (such as a driver's licence) should be examined before access to the file is granted. Since not everyone has a driver's licence, however, the institution should be prepared to accept other appropriate documentation.

If the requester wishes to have a copy of the personal information mailed to him or her, the institution should verify the requester's identity by telephone before forwarding the requested records. Since some individuals may have problems with physical access, requiring personal attendance to view personal information should not be the standard method of verifying identity.

### **Access Procedures**

[Subsection 48(2)]

Procedures for granting access to personal information are essentially the same as those for granting access to general records. Subsections 10(2) and 24(2) and sections 25 through 29 apply with necessary modifications to requests for personal information. The provisions which apply include the following:

- the requirement to sever exempt information (subsection 10(2));
- the requirement to assist in locating the record sought (subsection 24(2));
- the requirement to forward a request to the institution with custody or control (subsection 25(1));
- the option to transfer a request to the institution with the greater interest (subsections 25(2) and (3)); and
- the time limits for responding to a request (sections 26 and 27).

### **Manner of Access**

[Subsection 48(3)]

Subject to the regulations, where an individual is given access to personal information under subsection 48(1), the individual can examine the personal information or obtain a copy. As of the date of publication of this Manual, there were no regulations on manner of access to personal

information.

Where the individual is to examine a personal information record, both the privacy of the individual and the security of the information must be considered. An employee of the institution may be present to provide an explanation or clarification of the information being examined, and to safeguard the security of the record.

### **Comprehensible Form**

[Subsection 48(4)]

Personal information must be provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the information is stored and used. The Directory of Records is a useful reference for these terms and conditions.

Personal information may be stored in such a manner that it would not be readily understood by the individual. For instance, information produced in coded form is meaningless without providing the key to the code. Information provided in response to a request under the Act should be decoded, or the code or key provided, so the information can be understood by the individual.

It may be helpful to have an employee of the institution available to provide an explanation. In some cases, an explanation of terms, such as medical or scientific information, would be helpful to the individual.

## **Correction of Personal Information**

### **Right of Correction**

[Subsection 47(2)(a)]

Every individual who is given access to his/her personal information under subsection 47(1) has the right to request correction of that information if he/she believes it to be in error or incomplete. The individual may only request correction of personal information to which access has been granted. Requests for correction may relate to factual information or to opinions.

A request under the Act for correction of personal information will normally be made using the *Request for Correction of Personal Information* form prescribed by regulation. Written

requests for correction which make reference to the Act are also treated as requests under the Act.

The Head of the institution decides whether the correction will be made. Consideration must be given to the nature of the information submitted as a correction and whether it can be verified. The verification will usually be the same as that required when the information was originally collected. Where a correction may have a significant impact on the individual, because it affects such matters as financial status or eligibility, documentary proof may be required.

Opinion material obtained from persons other than the individual requesting the correction would not ordinarily be changed. A statement of disagreement is appropriate.

An opinion expressed by the individual which has been inaccurately recorded would, in all likelihood, be corrected. However, an opinion which was accurately recorded at the time it was collected but has changed subsequently would not likely be altered.

The Act does not prescribe the time within which the response must be provided to request for correction. However, the 30-day requirement for access requests is a reasonable time.

The response to a request for correction must be in writing and indicate either that the correction has been made or the reasons for not making the correction (see Appendix III – notification no. 13).

If the correction is made, the requester should be notified with a copy of the corrected record. The requester should also be notified of the right to have any person to whom the personal information was disclosed during the past 12 months notified of the correction.

If a correction is not made, the individual must be informed of the right to:

- appeal the decision;
- request that a statement of disagreement be attached to the record ( a copy of the correction request may serve as the statement of disagreement); and
- have any person to whom the personal information was disclosed during the past 12 months notified of the correction request or statement of disagreement.

## **Statement of Disagreement**

[Subsection 47(2)(b)]

An individual who has been given access to his/her personal information, and who has requested but not received correction of that information, may require that a statement of disagreement be attached to the personal information record.

The institution is obliged to attach the statement if requested by the individual. The statement is attached or linked in an appropriate way (e.g., flagging) to the record held by the institution.

## **Advising Users of Correction/Disagreement**

[Subsection 47(2)(c)]

An individual may require that any person or body to whom his/her personal information was disclosed in the previous year be advised of a correction or a statement of disagreement. The institution is obliged to make such notifications if requested by the individual.

The persons to be notified will include both those who receive the information as identified in the Directory of Records and other persons who have received the information as noted on the record of use in the individual's personal information record.

See Figure III, page 3-15.

## **Tracking and Recording**

In addition to the notification requirements in the Act, information on requests and the rationale for decisions on access should be documented. To maintain these records of requests, each institution should establish:

- internal procedures for processing access requests; and
- documentation to track each stage of a request, from initial receipt up to and including the final decision and any appeals.

This documentation may be required for management information reports and as evidence in the appeal process. It will also help to ensure that requests are processed within the time limits specified in the legislation and will provide the information needed to compile the annual report to the Information and Privacy Commissioner. A

*Tracking and Recording* form to assist in collecting this information is available from Government Stationery Service, Ministry of Government Services. Written guidelines explaining how to complete the form are available from the Freedom of Information and Privacy Branch, Management Board Secretariat.

Figure II

## Third Party Notice and Representation Process Section 28

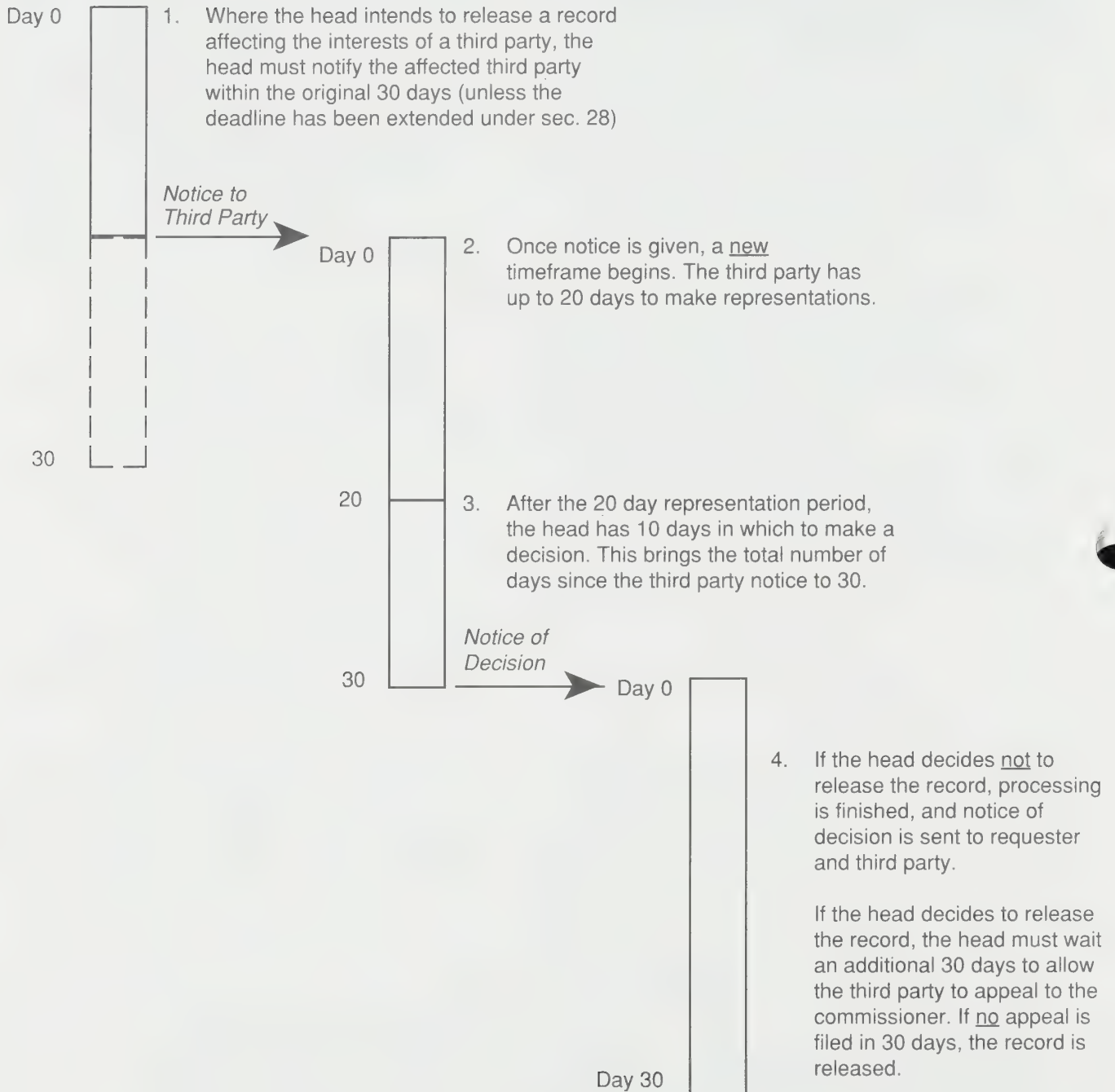
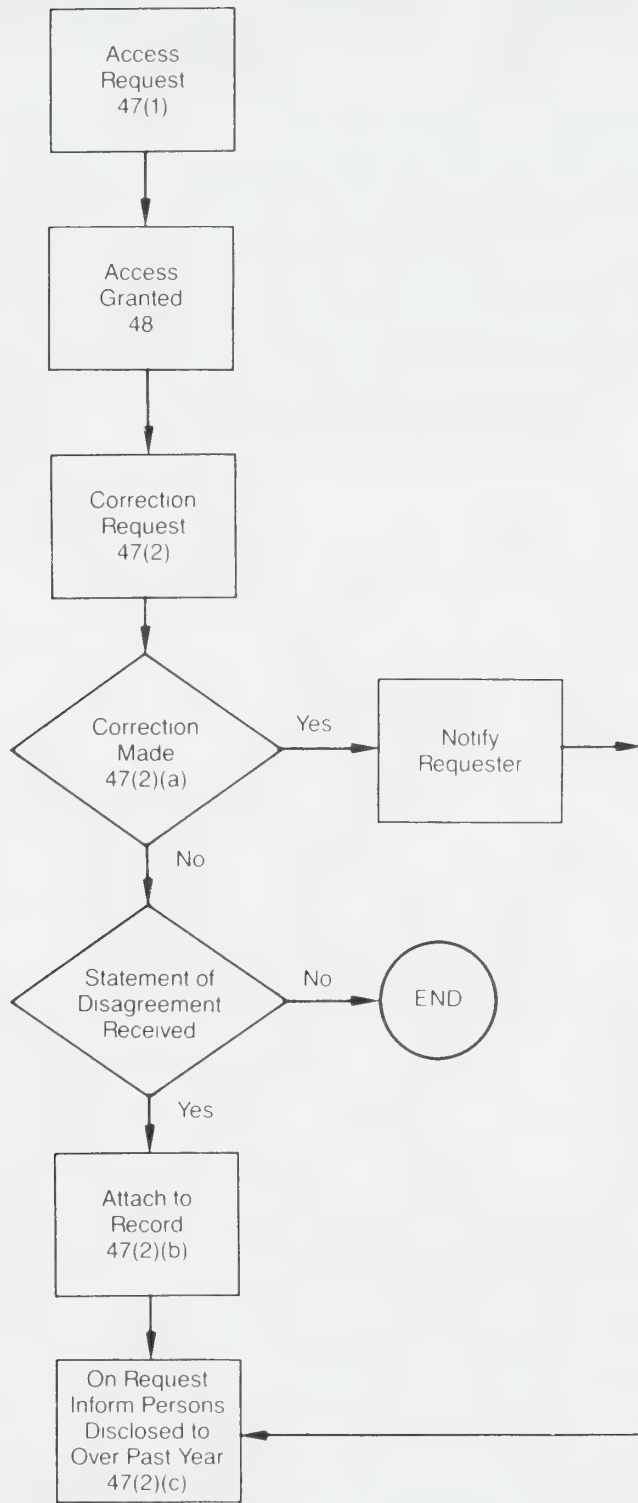




Figure III  
Correction Request











# Exemptions



# Exemptions

## Introduction

The Freedom of Information and Protection of Privacy Act provides a right of access to a record or part of a record in the custody or control of a government institution, unless it falls within one of the exemptions in sections 12 through 22 (subsection 10(1)). Necessary exemptions from the right of access should be “limited and specific” (subsection 1(a)(ii)). This means that an institution should interpret the exemption provisions narrowly. In addition, the institution bears the burden of proving that an exemption is justified in the event of an appeal to the Commissioner (section 53).

All of the exemption provisions, except section 21, also apply to a request by an individual for access to his/her own personal information (subsection 49(a)). Section 49 enumerates other grounds for refusal to disclose personal information to the individual to whom the information relates.

In addition to the exemptions in sections 12 to 22 and section 49, section 67 provides that the Freedom of Information and Protection of Privacy Act prevails over non-disclosure or confidentiality provisions in other Acts unless this Act or the other Act specifically provides otherwise.

In general, a record is not exempt because of its title or the fact it appears on a standard form. Rather a record, or part of a record, can be exempted because of what is contained in it. A record must be carefully examined before a determination can be made that an exemption applies.

This chapter begins with a discussion of the two types of exemptions (mandatory and discretionary) in the Act. The issues of compelling public interest and reasonable expectation are then addressed. This is followed by a detailed review of each exemption. Confidentiality provisions in other Acts are then considered.

A chart summarizing the exemptions and listing the page numbers where they are discussed in this chapter is included at page 4-2.

## Mandatory and Discretionary Exemptions

There are two types of exemptions in the Act. Some exemptions are mandatory; they impose a duty on the Head of an institution to refuse to disclose a record. Mandatory exemptions begin with the words: “A Head shall refuse to disclose. . .”. There are three mandatory exemptions: section 12 (Cabinet records), section 17 (third party information) and section 21 (personal privacy).

In the case of mandatory exemptions, the Head must determine whether facts exist or may exist which bring the record requested within the exemption. If grounds for the exemption exist, the Head must refuse access, unless a compelling public interest outweighs the purpose of exemptions 17 and 21.

Other exemptions are discretionary; they permit the Head to disclose a record despite the existence of the exemption. Discretionary exemptions are introduced by the words: “A Head may refuse to disclose. . .”. There are eight discretionary exemptions in Part II (Freedom of Information) of the Act – sections 13, 14, 15, 16, 18, 19, 20, 22 – and one in Part III (Protection of Individual Privacy) – section 49.

The Act requires a two-stage process in determining whether a discretionary exemption is to be applied. First, the Head must determine, as in the case of a mandatory exemption, whether facts exist or may exist which bring the record requested within an exemption. Second, the Head must decide whether he/she is willing to release the record, despite the existence of grounds for the exemption. A decision by a Head to disclose information falling within an exemption is an exercise of discretion.

In exercising discretion, the Head must consider the particular circumstances of each request (Order #135).

For example:

Subsection 18(1)(c) provides that the Head may refuse to disclose a record where disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario.

## Exemptions

The determination that disclosure could be expected to be injurious is one of fact. It is not the exercise of discretion. A decision by a Head to disclose the information in question, even though its disclosure could be injurious, is an exercise of discretion.

In the case of the discretionary exemptions in sections 13, 15, 18 and 20, if the Head has decided not to exercise his/her discretion in favour of disclosure, he/she must consider whether there is a compelling public interest that outweighs the purpose of the exemption.

### Compelling Public Interest

[Section 23]

Section 23 provides that an exemption from

disclosure under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. This provision applies to six exemptions, including two of the three mandatory exemptions.

Both the head and the Information and Privacy Commissioner can determine that disclosure is required in the public interest. Disclosure by the Commissioner in the public interest is covered in Chapter 6.

"Public interest" is defined at page 1-5. It is the interest of the public in general, not of any individual or group of individuals.

The test for disclosure in the public interest is a high one. The interest must be "compelling", in

#### EXEMPTIONS CHART (Sections 12 to 22, 49, 67)

Section	Category	Type <sup>1</sup>	Public Interest Override (P)	Reasonable Expectation Provision (R)	Page
Part II					
12	Cabinet Records	M			4-3 to 4-5
13	Advice to Government	D	P		4-5 to 4-8
14	Law Enforcement	D		R	4-8 to 4-12
15	Relations with Other Governments	D	P	R	4-13 and 4-14
16	Defence	D		R	4-14
17	Third Party Information	M	P	R	4-14 to 4-17
18	Economic and Other Interests of Ontario	D	P	R	4-17 to 4-19
19	Solicitor-Client Privilege	D			4-19
20	Danger to Safety or Health	D	P	R	4-20
21	Personal Privacy	M	P		4-20 to 4-29
22	Published Information	D			4-29
Part III					
49	Personal Information	D			4-29 and 4-30
Part V					
67	Confidentiality Provisions	M			4-31

NOTES: 1. Type: Mandatory (M) or discretionary (D)

Consent of Cabinet is required for disclosure of documents covered by certain exemptions (sections 12, 15, 16)



other words, strong, preponderant or overwhelming.

In addition to being “compelling”, the public interest must “clearly outweigh” the purpose of the exemption. There is therefore a balancing required by weighing the public interest against the purpose of the exemption. The results of that balancing test must be clear and definitive.

In considering whether to release a record in the public interest, a head must first determine whether an exemption applies, that is, whether facts exist which bring the record within the exemption. If the head determines that a mandatory exemption applies under section 17 or 21, he/she must then consider whether the public interest prevails over the interest in confidentiality. Where a discretionary exemption applies under section 13, 15, 18 or 20, and the Head decides not to exercise his/her discretion in favour of releasing the record, the Head must then consider whether the public interest outweighs the purpose of the exemption.

If the test is met, the record would be released, although certain procedural steps have to be followed by the head (but not the Commissioner) for certain exemptions.

*For example:*

Before information which is exempt under section 15 (relations with other governments) can be released in the public interest, the approval of Executive Council is required.

Before information which is exempt under section 17 (third party information) or section 21 (personal privacy) can be released in the public interest, the notification requirements in section 28 which apply to those two sections must be followed.

## Reasonable Expectation

A number of exemptions contain the words “where the disclosure could reasonably be expected” to lead to a specified consequence. Reasonableness is judged by an objective standard. A reasonable expectation exists where there is a high degree of probability that the action will lead to the result.

## Cabinet Records

[Section 12]

Section 12 provides a mandatory exemption where disclosure of a record “would reveal the substance of deliberations of an Executive Council or its committees”.

“Executive Council” means Cabinet.

The exemption applies to Cabinet and to committees of Cabinet. These committees include Policy and Priorities Board, Management Board, the Cabinet committees for various policy areas, the Cabinet Committees on Legislation and Regulations and other Cabinet committees that may be constituted from time to time.

The exemption, however, does not apply to records sent to Cabinet in a manner that is outside of the normal Cabinet submission process. Therefore, where for example a non-governmental third party sends a proposal directly to Cabinet, the exemption in section 12 does not apply (Order #80).

It is not necessary to show that any injury would result from disclosure in order to claim the exemption.

The public interest provision in section 23 does not apply to this exemption.

### Substance of Deliberations

[Subsection 12(1)]

Subsection 12(1) provides that a Head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of Cabinet or its committees, including certain records referred to in clauses (a) through (f). The use of the word “including” indicates an expanded definition of the types of records which are deemed to qualify as subject to the exemption, regardless of whether their disclosure would reveal the substance of deliberations of Cabinet. At the same time, the types of records listed in clauses (a) through (f) are not the only ones eligible for the exemption. Any record whose disclosure would reveal the substance of deliberations of Cabinet or its committees qualifies for the exemption in subsection 12(1) (Order #22). Only in rare circumstances would a record which has never been placed before Cabinet reveal the “substance of deliberations” of Cabinet (Order #72).

### **Agendas and Minutes**

[Subsection 12(1)(a)]

An agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees is exempt. The reference to the Executive Council or its committees means the full Executive Council or its Committees (Order #131). "Other record" would have to be of the same nature as an agenda or minute.

### **Policy Options or Recommendations**

[Subsection 12(1)(b)]

A record containing policy options or recommendations submitted, or prepared for submission, to Cabinet or its committees is exempt.

There must be evidence that the record either was sent to Cabinet for consideration or was prepared with the specific intention of presenting it to Cabinet.

A record containing policy options or recommendations includes a Cabinet submission (or policy submission) which proposes alternative courses of action to resolve a problem, provides discussion of the merits of the alternatives, and makes recommendations.

### **Background Explanations and Analyses**

[Subsection 12(1)(c)]

This subsection provides an exemption for records that do not contain policy options or recommendations referred to in subsection 12(1)(b), but that do contain background explanations or analyses of problems submitted or prepared for submission to Cabinet or its committees for consideration in making decisions, before those decisions are made and implemented.

A Cabinet submission is sometimes accompanied by a record which provides a background explanation or analysis of the problem which the Cabinet submission is intended to address. Such accompanying material is only exempt from disclosure until Cabinet has decided the course of action it will take in relation to the issue and the decision has been implemented. A decision has been implemented when steps have been taken to give effect to the decision.

For example:

Cabinet may decide to introduce legislation, but the decision is implemented when the legislation is introduced.

### **Consultation Among Ministers**

[Subsection 12(1)(d)]

This subsection provides an exemption for a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy. Such records would usually be memoranda to and from ministers and minutes of meetings of ministers.

### **Briefing to Minister**

[Subsection 12(1)(e)]

This subsection provides an exemption for a record to brief a minister of the Crown on matters that are, or are proposed to be, brought before Cabinet or its committees, or that are the subject of consultation among ministers relating to government decisions or the formulation of government policy. Such records would ordinarily be prepared by the institution's staff or the minister's political advisors and would typically contain information which would inform the minister of the essential facts and circumstances respecting a matter. An index or list of topics or briefings considered by a minister would not contain sufficient information to fall within the subsection (Order #131).

### **Draft Legislation**

[Subsection 12(1)(f)]

Draft legislation (including regulations) is exempt from disclosure. However, this subsection only applies where disclosure of the draft legislation would reveal the substance of deliberations of Cabinet. The exemption does not, therefore, inhibit the practice followed by many ministries of distributing legislation for comment to interested parties when the draft legislation is under development by a ministry but has not yet been submitted to Cabinet. Where draft legislation has been considered by Cabinet, Cabinet may consent to distribution of the draft legislation for comment.

## Exceptions to Exemption for Cabinet Records

[subsections 12(2)(a) and (b)]

### Documents More Than Twenty (20) Years Old

A Head shall not refuse to disclose a record under subsection 12(1) where the record is more than 20 years old. This subsection does not place an obligation on an institution to retain a record for 20 years. Record retention schedules will be followed.

### Consent of Cabinet

The Executive Council for which, or in respect of which, the record has been prepared can consent to access being given to a Cabinet record before the 20-year period has run. Consent will normally be reflected in a Cabinet minute.

This exception to the exemption only applies to the Cabinet for which the record was prepared. One Executive Council cannot consent to the release of another's records. An Executive Council is considered to have changed where there has been, for example, an election or a change of government.

Subsection 12(2)(b) does not impose a mandatory requirement, but rather provides the Head with discretion to seek Cabinet consent where he or she feels a record should be released and where a reasonable expectation may exist that Cabinet will not withhold its consent (Order #24).

The following are factors that the Head might consider in deciding whether to seek the consent of Cabinet to the disclosure of a record:

- the subject matter;
- whether or not the government policy contained in the record has been announced or implemented;
- whether the record would reveal the nature of Cabinet discussion on the position of an institution;
- whether the record has, in fact, been considered by the Cabinet (Order #24).

The Head has a duty in every case to consider whether to seek Cabinet consent. On an appeal, the institution must be able to present evidence that the Head has considered the seeking of consent (Order #72).

## Advice to Government

[Section 13]

Subsection 13(1) provides a discretionary exemption for records where disclosure would reveal the advice or recommendations of employees of institutions or consultants retained by an institution.

The exemption is for "advice or recommendations". There is some overlap between the terms "advice" and "recommendations". The term "recommendations" refers to formal recommendations about courses of action to be followed which are usually specific in nature and are proposed mainly in connection with a particular decision. "Advice" refers to less formal suggestions about particular approaches to take or courses of action to follow. In order to qualify as "advice or recommendations" there must be evidence of communication of information from one person to another (Order #58).

*For example:*

A draft letter which is communicated to another person may be advisory, but where there is no communication of the draft letter, it does not fall under subsection 13(1), (Order #92).

Advice must contain more than mere information (Order #118). Advice and recommendations, however, do not cover the whole range of activities carried out by employees of institutions in the course of policy development, administration of programs, operation of facilities and adjudication.

*For example:*

Draft reports or briefing materials not intended for Cabinet normally fall within subsection 13(1), (Order #72).

This subsection covers advice or recommendations given by public servants and by all persons employed by or in the service of institutions designated under the Act, including members of the



staff of a minister's office and persons who are under contract to provide services as consultants to an institution. Therefore, where a public servant is not employed by an institution, records containing his or her advice or recommendations may still be exempt.

The subsection is not restricted to advice or recommendations given to the Head of the institution. The *compelling public interest* override in Section 23 applies to this exemption. Therefore, where there is an exemption and the Head has not exercised his/her discretion in favour of disclosure, the Head must consider whether the compelling public interest outweighs the interest in confidentiality. If it does, the document would be disclosed.

Subsections 13(2) and (3) provide exceptions to this exemption.

### Exceptions to Exemption for Advice to Government

[Subsection 13(2)]

Subsection 13(2) requires that the Head shall not refuse, under subsection 13(1), to disclose certain records and information despite the exemption for advice or recommendations contained in subsection 13(1).

Factual or statistical material must be made available to the public. Where factual or statistical material and advice or recommendations are contained in the same record, the advice or recommendations may be severed and withheld. However, where the factual material is so intertwined with the advice that it is not possible to disclose the factual material without also disclosing the exempt material, the record need not be severed (Order #92).

In addition, subsection 13(2) requires that certain reports, studies, plans and reasons for final decisions be released, even though they may contain advice or recommendations.

It should be noted that subsection 13(2) is an exception only to subsection 13(1). Therefore, a record such as an environmental impact statement which contains advice or recommendations cannot be exempt under subsection 13(1). It may, however, be covered by other exemptions.

A "report" or "study" within subsection 13(2) means a completed document ready for presentation and would not include working papers used in preparation such as notes and preliminary drafts.

### Factual Material

[Subsection 13(2)(a)]

Records or parts of records containing essentially factual material must be disclosed.

Factual material does not offer advice or recommendations but analyses the factual background or assesses options relating to a specific factual situation. Professional or technical opinions are factual when they draw inferences or conclusions from a body of information applying the expertise of the discipline.

"Factual material" does not refer to occasional assertions of fact, but rather contemplates a coherent body of facts separate and distinct from the advice and recommendations contained in the records, for example, an appendix or schedule of factual information supporting a policy document.

### Statistical Survey

[Subsection 13(2)(b)]

A statistical survey must be disclosed unless another exemption applies.

A statistical survey is a record showing the collection, analysis, interpretation and presentation of aggregate data in relation to a topic or issue which is the object of study, e.g. a poll.

Where records within subsection 13(2) contain information covered by other exemptions, that information would not be released. Therefore, any information in a statistical survey identifying individuals must be removed before it is disclosed.

### Valuator's Report

[Subsection 13(2)(c)]

The report of a valuator, including findings and conclusions, whether or not the valuator is an officer of the institution, must be disclosed unless another exemption applies.



*For example:*

An appraisal of the value of real property.

A valuator is someone with specific expertise appointed to determine or estimate the value, price or merit of an article.

### **Environmental Impact Statement**

[Subsection 13(2)(d)]

An environmental impact statement or similar record must be disclosed.

An environmental impact statement is a record containing a technical assessment, including findings and conclusions respecting the social, cultural, economic and environmental consequences of projects such as buildings, highways and transmission corridors.

### **Test Report**

[Subsection 13(2)(e)]

An institution cannot under subsection 13(1) refuse to disclose a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report.

In this subsection, "government" includes ministries and all the agencies and other bodies designated as institutions. Product and environmental testing is discussed under subsection 18(2).

### **Report on Performance**

[Subsection 13(2)(f)]

A report or study on the performance or efficiency of an institution is not exempt under subsection 13(1). The report or study may be of a general nature or with regard to a particular program or policy.

*For example:*

Internal audit and program evaluation reports, including their findings and conclusions.

### **Feasibility Study**

[Subsection 13(2)(g)]

A feasibility study or other technical study, including a cost estimate, relating to a government policy or project must be disclosed unless

another exemption applies.

A feasibility study or other technical study is prepared by experts in the relevant discipline to determine whether a proposed government policy or project can be accomplished within certain given assumptions and constraints.

In this subsection, "government" includes ministries and all the agencies and other bodies designated as institutions.

### **Field Research**

[Subsection 13(2)(h)]

The exemption in subsection 13(1) does not apply to a report setting out the findings and conclusions of field research on an issue or problem which is undertaken before the formulation of a policy proposal.

### **Proposal to Change or Establish a Program**

[Subsection 13(2)(i)]

Unless another exemption applies, this subsection requires disclosure of a final plan or proposal to change or establish a program (including a budgetary estimate), whether or not the plan or proposal is subject to approval.

This exception must be considered in relation to the exemption in subsection 18(1)(f). Subsection 13(2)(i) refers to a final plan or proposal to alter or establish a program which provides a service to the public and which is developed and implemented to carry out the institution's statutory responsibilities. Subsection 18(1)(f) is concerned with internal administrative arrangements relating to personnel which do not fundamentally alter the nature and content of the programs being delivered to the public.

A "final plan or proposal" would not include preliminary or discussion drafts of a plan or proposal to alter or establish a program.

If the plan or proposal is one that is to be presented to Cabinet or its committees, this subsection does not apply and the section 12 exemption must be considered.

### **Report of Interdepartmental Task Force** [Subsection 13(2)(j)]

Unless another exemption applies, this subsection requires disclosure of a report of an interdepartmental task force or similar body, or of a committee within an institution which has been established for the purpose of preparing a report.

The word “interdepartmental” in this subsection means “interinstitutional” in the sense of involving representatives of more than one institution designated under the Act.

*For example:*

A report of a task force including members from the Ministry of the Environment and Ontario Hydro would be included.

If the report is to be submitted to Cabinet or its committees, this subsection does not apply and the section 12 exemption must be considered.

### **Committee Report** [Subsection 13(2)(k)]

A report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution must be disclosed unless another exemption applies.

The type of “committee, council or other body” referred to in this subsection is one that consists primarily of representatives from outside the institution.

The phrase “attached to an institution” indicates that the body has been appointed or invited to meet and deliberate by someone in an institution with appropriate authority.

### **Reasons for Decision** [Subsection 13(2)(l)]

Unless another exemption applies, this exception requires disclosure of the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of a discretionary power under an enactment or scheme administered by the institution.

This exemption covers a wide range of decisions made within an institution. The exemption applies regardless of appeal rights and whether or not the reasons are recorded in an internal memorandum or external correspondence, or whether or not they were given by the deciding officer or were subsequently incorporated into the decision, order or ruling.

Names and other features identifying individuals mentioned in the record may be exempt under section 21.

### **Further Exceptions to Exemption for Advice to Government** [Subsection 13(3)]

#### **Documents More Than Twenty (20) Years Old**

A Head shall not refuse to disclose a record under subsection 13(1) where the record is more than 20 years old.

This subsection does not place an obligation on an institution to retain a record for 20 years. Record retention schedules will be followed.

#### **Basis for Decision or Policy**

A Head shall not refuse to disclose a record under subsection 13(1) where he/she has publicly cited the record as the basis for making a decision or formulating a policy.

### **Law Enforcement** [Section 14]

Section 14 provides a discretionary exemption for records relating to police investigations and certain other regulatory, investigative, adjudicative and protective functions of the Ontario government.

Subsection 14(1) provides an exemption where disclosure could reasonably be expected to interfere with law enforcement and certain other activities. Subsection 14(2) exempts certain types of law enforcement records. Subsection 14(3) provides that a Head may refuse to confirm or deny the existence of records in subsections 14(1) and (2). Subsections 14(4) and (5) set out exceptions to the exemption.

Records relating to law enforcement are exempt in order to preserve confidential sources of information and the effectiveness of law enforcement activities and techniques.

Although the phrase "law enforcement" is not used in the opening words of the section, it is used in many of the specific provisions set out in subsection 2(1) of the Act and is included in the Definitions section in Chapter 1. Law enforcement investigations do not include internal employment-related investigations for other than violations of law (orders #157,170).

The term "could reasonably be expected to" as used in Section 14 of the Act requires that the expectation of the harm coming to pass should the record be disclosed, not be fanciful, imaginary or contrived but rather based on reason. An institution relying on the Section 14 exemptions bears the onus of providing evidence to substantiate the reasonableness of the expected harm by virtue of section 53 of the Act (Order #188).

The compelling public interest override in section 23 does not apply to this exemption.

#### **Law Enforcement Matter** [Subsection 14(1)(a)]

This exemption applies if disclosure could reasonably be expected to interfere with a law enforcement matter. To "interfere with" a law enforcement matter means that the disclosure would have the effect of hampering or impeding the conduct of a proceeding or the carrying out of a law enforcement activity.

"Law enforcement matter" refers to a proceeding or an activity that is within the scope of "law enforcement" as defined in subsection 2(1) of the Act.

#### **Law Enforcement Investigation** [Subsection 14(1)(b)]

The Head may refuse to disclose<sup>1</sup> a record where the disclosure could reasonably be expected to interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

"To interfere with an investigation" does not

mean that disclosure would altogether prevent a law enforcement investigation from taking place but rather, as in subsection 14(1)(a), that disclosure would hinder or impede the carrying out of an investigation.

*For example:*

Disclosure to an individual that he/she is the subject of a current law enforcement investigation would probably not prevent the investigation from continuing, but in many cases would hamper or impede it. In these circumstances, records relating to the investigation would be exempt.

An "investigation" is the methodical determination of facts and gathering of evidence. In some cases, the evidence gathered in an investigation will be insufficient to support the commencement of a proceeding in a court or tribunal. A record of the investigation could still be exempt, however, since it is undertaken with a view to a law enforcement proceeding.

#### **Investigative Techniques** [Subsection 14(1)(c)]

This subsection exempts a record where the disclosure could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. The purpose is to preclude access to information about the application of technology to investigative techniques where revelation would undermine or jeopardize the effectiveness of such techniques.

#### **Confidential Source** [Subsection 14(1)(d)]

This subsection exempts from disclosure a record where the disclosure could reasonably be expected to reveal the identity of a confidential source of information in respect of a law enforcement matter or disclose information furnished only by that confidential source.

*For example:*

A police informant is a source protected under the exemption.

A family member who provides information in confidence about a violation of law by another member would also be protected.



### **Safety**

[Subsection 14(1)(e)]

A record is exempt where the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

*For example:*

Revealing the identity of an undercover police officer.

Section 20 also provides an exemption where disclosure of a record could reasonably be expected to seriously threaten an individual's safety or health.

### **Fair Trial or Impartial Adjudication**

(Subsection 14(1)(f))

Access to a record can be refused if its disclosure could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication. In order to demonstrate unfairness under subsection 14(1)(f), an institution must produce more evidence than the mere commencement of a legal action. The institution must present specific arguments as to how or why the disclosure of specific portions of the record could reasonably be expected to deprive the person of a fair trial (Order # 48).

The scope of the exemption is not limited to courts but extends to tribunals established by legislation to adjudicate individual or collective rights. This subsection does not contain a reference to "law enforcement" and, accordingly, the exemption applies to proceedings which do not fall within the definition of law enforcement.

*For example:*

The Ontario Labour Relations Board is such a body. In the course of determining a matter within its jurisdiction, much personal information is provided to the Board. Such information could be exempted from disclosure under subsection 14(1)(f) on the grounds that it would deprive a person of the right to impartial adjudication.

### **Intelligence Information**

[Subsection 14(1)(g)]

This subsection exempts from disclosure records where the disclosure could reasonably be expected to interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons.

"Intelligence information" is gathered because it may be useful for future investigations. It may also be used for activities aimed at preventing the commission of an offence and for the purpose of ensuring the security of individuals or organizations including institutions covered by the Act. Intelligence information may be derived from previous investigations which may or may not have resulted in the commencement of proceedings against a person or organization. It may also be gathered through observing the conduct of associates of known criminals and through other activities.

### **Confiscated Records**

[Subsection 14(1)(h)]

This exemption applies where disclosure could reasonably be expected to reveal a record which has been confiscated from a person by a peace officer in accordance with a statute or regulation.

### **Security**

[Subsection 14(1)(i)]

This exemption applies to records where disclosure could reasonably be expected to endanger the security of a building, or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

The institution ought to consult with other relevant institutions to determine the security implications of records.

The exemption is qualified by the requirement that the protection be reasonably required.

"Items" means things or articles .

"Security" in this subsection means a state of safety or physical integrity. The security of a building could include the safety of its inhabitants or occupants. It could also include the security of a structure which adjoins or connects



buildings.

*For example:*

A security audit is a record where disclosure would endanger the security of a system or procedure established for the protection of items.

### **Facilitate Escape**

(Subsection 14(1)(j))

This provision exempts record where the disclosure could reasonably be expected to facilitate the escape from custody of a person who is under lawful detention. The institution ought to consult with other relevant institutions to determine the security implications of records.

"Custody" indicates that an individual is not free to leave a place of confinement without restriction.

In general, any person held in custody pursuant to a valid warrant or other authorized order is "under lawful detention". Individuals "under lawful detention" include:

- those in custody under federal or provincial statute;
- young persons in open or secure custody or pre-trial detention under the Young Offenders Act;
- those involuntarily committed to psychiatric institutions under the Mental Health Act, a Lieutenant Governor's warrant, or a court-ordered psychiatric assessment;
- parole violators held under a warrant issued by the Ontario or National Parole Board.

The term "facilitate" means make easier or less difficult. The exemption applies to construction plans and specifications regarding a maximum security facility. It is not necessary that the plans be extremely detailed.

The fact that the plans for the secured facility were available to the public in the past does not mean that this section requires that they continue to be available. It is appropriate to limit access to records for security reasons (Order #187).

### **Centre for Lawful Detention**

[Subsection 14(1)(k)]

The provision exempts records where disclosure could reasonably be expected to jeopardize the security of a centre for lawful detention. The institution ought to consult with other relevant institutions to determine the security implications of records.

"Centres for lawful detention" include:

- correctional institutions, such as jails, detention centres and correctional centres;
- police cells and lock-ups;
- psychiatric facilities where patients are involuntarily committed;
- federal penitentiaries;
- facilities for detention of young offenders, such as open and secure custody facilities and temporary detention facilities;
- facilities for holding immigration detainees.

Records where disclosure might jeopardize the security of a detention centre include those containing details of previous investigations of escape attempts and details of security measures in place. As well as an in-house telephone directory of a centre for lawful detention would be exempt under this provision (Order #77).

### **Facilitate Commission of Unlawful Act or Hamper Control of Crime**

[Subsection 14(1)(l)]

This subsection applies to a record where disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. The record could be useful in planning or committing an unlawful act, or could allow a person to escape detection.

"Unlawful act" means a contravention of a statute or regulation or of a municipal by-law.

### **Other Exemptions (Law Enforcement)**

[Subsection 14(2)]

As part of the law enforcement exemption, subsection 14(2) specifies certain records which the Head may refuse to disclose.

Subsection 14(2) deals with the confidentiality that necessarily surrounds law enforcement investigations in order that institutions charged with external regulatory activities can carry out their duties (Order #98).

### **Law Enforcement Report** [Subsection 14(2)(a) and (4)]

Subsection 14(2)(a) exempts from disclosure a report prepared in the course of law enforcement inspections or investigations by an agency responsible for enforcing and regulating compliance with the law. A report includes a broad range of documents providing information or opinions prepared in the course of law enforcement inspections or investigations. Where one record is a report in its entirety, it need not be severed (Order #38). The exemption in subsection 14(2)(a) is modified by subsection 14(4) which must be read together with it.

Subsection 14(4) does not allow the Head to exempt from disclosure a report containing the results of a routine inspection by an agency with statutory authority to enforce and regulate compliance with standards (eg., the enforcement or compliance branch of an institution). "Routine inspections" are inspections that are carried out where there are no specific allegations that standards have been breached.

Material relating to routine inspections in areas such as health and safety legislation, fair trade practices laws, environmental protection schemes and many of the other regulatory schemes administered by government are to be open to public scrutiny.

### **Act of Parliament** [Subsection 14(2)(b)]

This subsection exempts a law enforcement record where disclosure would be an offence under an Act of Parliament.

*For example:*

A provision of an Act of Parliament which makes it an offence to disclose law enforcement records is section 46 of the Young Offenders Act. That section makes it an offence to disclose knowingly certain court, police and government records relating to

young offenders, except as authorized by that Act.

### **Civil Liability** [Subsection 14(2)(c)]

This subsection exempts a law enforcement record where disclosure could reasonably be expected to expose the author of the record, or any person who has been quoted or paraphrased in the record, to civil liability.

The purpose of this exemption is to provide protection for law enforcement officials who might be sued for defamation as a result of disclosure of records made while carrying out their duties. The exemption applies only where there is a reasonable expectation that exposure to civil litigation would result from disclosure.

### **Correctional Authority** [Subsection 14(2)(d)]

This subsection exempts records that contain information relating to an individual's correctional history while the individual is under the control or supervision of a correctional authority.

Individuals under the control or supervision of a correctional authority include not only adults and young offenders in custody, but those still subject to control by correctional authorities or their agents due to legally-imposed restrictions on their liberty.

*For example:*

Individuals on parole, on probation, on a temporary absence permit, under bail supervision or performing community service work would be covered.

### **Refusal to Confirm or Deny Existence of a Record** [Subsection 14(3)]

Subsection 14(3) provides that a Head may refuse to confirm or deny the existence of a record to which subsections 14(1) and (2) apply.

Situations may arise in which merely disclosing the existence of an investigatory or intelligence file will communicate information to the requester which may frustrate ongoing investiga-

tion or intelligence-gathering.

Where the Head refuses to confirm or deny the existence of a record, the requester must be notified of the refusal under subsection 29(2) (see page 3-8).

## Exceptions to Exemption for Law Enforcement

### Routine Inspections

[Subsection 14(4)]

Subsection 14(4) requires that the Head disclose a record that is prepared in the course of routine inspections by an agency authorized to enforce and regulate compliance with Ontario statutes, despite subsection 14(2)(a).

For a discussion of this subsection dealing with routine inspections, see subsection 14(2)(a).

### Degree of Success of Enforcement Program

[Subsection 14(5)]

The exemptions provided in subsections 14(10) and (2) do not apply to a record on the degree of success achieved in a law enforcement program, including statistical analyses, unless disclosure of the record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

## Relations with Other Governments

[Section 15]

Section 15 provides a discretionary exemption where disclosure of a record could reasonably be expected to prejudice the conduct of inter-governmental relations by the Government of Ontario or an institution or reveal information received in confidence from other governments. "Other governments" includes the federal, provincial or territorial governments in Canada, foreign national or state governments as well as any agency of a government, or an international organization of states.

If the Head proposes to exercise his/her discretion to disclose information covered by this exemption, *prior approval of the Executive Council (Cabinet)* is required.

The *compelling public interest* override in section 23 applies to this exemption. Where there is an exemption and the head decides not to exercise his/her discretion in favour of recommending release, the Head must consider whether a compelling public interest outweighs the purpose of the exemption. If it does, the Head would have to obtain the approval of Executive Council (Cabinet) before releasing the record in the public interest.

### Prejudice to Intergovernmental Relations

[Subsection 15(a)]

This exemption applies if there is a reasonable expectation of prejudice (injury) to the conduct of intergovernmental relations. "Intergovernmental" extends to the relationship that the Government of Ontario or an institution has with other governments. The term "relations" includes not only current negotiations, but general and ongoing exchanges with other governments.

### Confidential Information

[Subsection 15(b) and (c)]

These subsections apply where the disclosure could be expected to reveal information received in confidence by an institution from another government or its agencies, or from an international organization of states or a body thereof.

To be "received in confidence", the information must be received in circumstances which would impart an obligation on an institution to maintain the information in confidence. This may be stated explicitly, either verbally or in writing, by the supplier of the information. In cases of a verbal statement of confidentiality, some formal record should be made by the institution receiving the information.

In addition, the obligation to maintain confidentiality may be implied by the conduct of the governments, agencies, organizations or bodies involved or from their past practices.

Subsection 15(b) provides that the information could be received from another government or its agencies. For the purpose of the Act, a municipality is not a "government" or an agency of government. An "agency of government" is an organizational unit formally established or



otherwise designated by the government to carry out responsibilities on its behalf. A corporation in which the government has a controlling proprietary interest may also be an agency.

Subsection 15(c) provides that the information could be received from “an international organization of states” (e.g., NATO, Commonwealth of Nations, United Nations, International Monetary Fund, OECD, Interpol) or “a body, thereof” (e.g., World Bank, International Labour Organization, UNESCO, Food and Agricultural Organization).

## Defence

[Section 16]

This section provides a *discretionary* exemption for a record where disclosure could reasonably be expected to prejudice (or injure) the defence of Canada or any foreign state allied or associated with Canada.

The “defence of Canada or any foreign state allied or associated with Canada” includes the prevention of attack and other acts of aggression against Canada or any state allied or associated with Canada.

An “allied state” is one with which Canada has concluded formal alliances or treaties. An “associated state” is a state with which Canada may be linked for trade or other purposes outside the scope of a formal alliance.

The section also exempts records whose disclosure could reasonably be expected to be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism.

If the Head proposes to disclose the information despite the exemption, prior approval of the Executive Council (Cabinet) is required. The compelling public interest override in section 23 does not apply to this exemption.

## Third Party Information

[Section 17]

Section 17 provides a mandatory exemption from disclosure of certain third party information where disclosure could reasonably be expected to cause harm.

Institutions acquire substantial amounts of

information about the activities of enterprises in the private sector. Much of this information constitutes a valuable asset to the third party, and disclosure would impair its ability to compete effectively.

The application of this section is not, however, limited to commercial third parties but applies to any supplier of the specified information provided the three-pronged test outlined below is met. A third party may include a municipality or a non-profit agency.

In order to fall within the subsection 17(1) exemption, a three-pronged test containing the following criteria must be met:

- it must fit within one of the specified categories of third party information (see discussion of the categories in this chapter);
- it must be supplied in confidence, implicitly or explicitly; and
- its disclosure could reasonably be expected to cause injury (see discussion of the injury tests in this chapter).

Subsection 17(2) contains a mandatory exemption for records that reveal information obtained on a tax return, or which were gathered for the purpose of determining tax liability or for tax collection. The three-pronged test need not be met for records in this category.

Section 28 provides that before a Head grants access to a record that he/she has reason to believe might contain information referred to in subsection 17(1) that affects the interest of a third party, that party must be notified and given the opportunity to make representations (see page 3-7 for a discussion of the notification procedure).

The public interest provision in section 23 applies to this exemption. Therefore, where there is an exemption, the Head must consider whether the public interest outweighs the need for confidentiality. If proposing to release a record in the public interest, the Head must follow the notice requirements in section 28.

Subsection 17(3) provides an exception to subsections 17(1) and (2) where the affected third party consents to disclosure.



## Categories of Third Party Information

[Subsection 17(1)]

Subsection 17(1) provides that to come within this exemption, the record must contain one or more of the following six types of information:

- trade secret;
- scientific information;
- technical information;
- commercial information;
- financial information; or
- labour relations information.

## Definitions

**Trade secret:** A trade secret must meet all of the following criteria:

- it must consist of information;
- it is, or may be, used for an industrial, trade or business use;
- it is not generally known in that industry, trade or business;
- it has economic value from not being generally known; and
- it has been treated in a manner to ensure its continued confidentiality.

**Scientific information:** The term refers to information relating to or exhibiting the methods or principles of science.

*For example:*

A proposal describing innovative energy technologies in a grant application.

**Technical information:** The term refers to information particular to an art or profession.

*For example:*

Architectural design, system design specifications.

**Commercial information:** This term refers to information concerning the sale, purchase or exchange of goods, products or property.

*For example:*

Customer and price lists, lists of suppliers, marketing and advertising plans (including market research surveys) and other similar information related to the commercial operation of a business.

**Financial information:** The term refers to information relating to money and its use or distribution.

*For example:*

Cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.

**Labour relations information:** The term refers to information concerning the relationship between employers and their employees, both union and non-union, particularly information relating to collective bargaining.

*For example:*

Bargaining positions of an employer and a union engaged in mediation proceedings.

## The Confidentiality Test

Subsection 17(1) provides that the information must be supplied in confidence. The intention to maintain confidentiality may be expressed or may be implied from the circumstances (or the conduct of the parties). Confidentiality may be implied where, for example, there is evidence that the information was consistently treated in confidence. As well, information deriving from an institution's negotiations with a third party, is not "supplied" by the third party (Order #87). Information is not supplied in confidence by a third party if an institution obtains the information itself through actions required by statute (Order #16).

## The Injury Tests

If the information falls within the one of the categories described, and was supplied in confidence, then it is necessary that its disclosure could reasonably be expected to yield one of the three results discussed below.

### **Competitive Position or Negotiations**

[Subsection 17(1)(a)]

The subsection applies where the disclosure could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization.

This involves significant injury to competitive position, or significant interference with contractual or other negotiations. It requires some measure of the injury. The particular circumstances must be evaluated in each case.

The "competitive position" could be prejudiced without resulting in any immediate or direct loss. There must be a competitive community where another's knowledge of the relevant information could affect the competitive position.

The "negotiations" for which the exemption may be claimed are contractual negotiations or some similar type, such as negotiations relating to the settlement of a lawsuit or negotiations regarding the funding of a non-profit agency.

The injury contemplated may be either to the third party submitting the information, or to any person or group of persons, or to an organization other than an institution.

### **Impede Supply of Similar Information**

[Subsection 17(1)(b)]

This subsection applies where disclosure could reasonably be expected to result in similar information no longer being supplied to an institution where it is in the public interest that similar information continue to be supplied.

Release of the information would deter the voluntary supply of similar information from the same or another source. The consideration here is whether a third party requires assurance of confidentiality prior to voluntarily supplying information. The test is whether the third party or another source would entrust similar information to the institution in the future if the information were disclosed. If not, this subsection applies.

A further necessary test is that it is in the public interest that the institution continue to receive the information. At issue is the public interest, not necessarily the institution's interest.

### **Undue Loss or Gain**

[Subsection 17(1)(c)]

This subsection applies when the disclosure could reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

The loss or gain referred to in this subsection could be of any character, but must be "undue". "Undue" means more than necessary, improper, or unwarranted. The loss or gain need not be attributable to the third party submitting the information, but to "any person, group, committee or financial institution or agency".

### **Labour Relations Information**

[Subsection 17(1)(d)]

This subsection applies where disclosure could reasonably be expected to reveal a report or information supplied to a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

### **Taxing Information**

[Subsection 17(2)]

This subsection provides a mandatory exemption for records which reveal information obtained on a tax return or for records which are gathered to collect a tax or to determine tax liability. The injury tests in subsection 17(1) do not apply to subsection 17(2).

### **Exception to Exemption for Third Party Information**

#### **Consent to Disclosure**

[Subsection 17(3)]

This subsection gives the Head discretion to release the information described in subsection 17(1) or (2) if the person to whom the information relates consents.

The person to whom the information relates could be the third party who submitted it, but could also be any other person who is a subject of the information.

*For example:*

Where a contractor supplies information about itself and about the sub-trades on a

particular project, both the contractor and the sub-trades could be person “to whom the information relates”, and each would have to give consent to disclosure.

## Economic and Other Interests of Ontario

[Section 18]

Section 18 provides a discretionary exemption for certain proprietary information of institutions and the premature disclosure of certain plans or negotiating strategies.

Subsections 18(1) (a) through subsection (i), set out the types of information covered by this exemption. Subsection 18(2) contains an exception to the exemption.

The *public interest* override in section 23 applies to this exemption. Where there is an exercise of his/her discretion in favour of disclosure, the head must consider whether the public interest in disclosure outweighs the need for confidentiality.

### Commercial Information

[Subsection 18(1)(a)]

This subsection allows the Head of the institution to exempt from disclosure trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution. All other information of this type held by, but not belonging to, an institution is considered third party information and is subject to the provisions of section 17. The information must have monetary value or potential monetary value.

The terms “trade secret” and “financial, commercial, scientific and technical information” have the same meaning as in section 17 (see page 4-15.)

Having “monetary value or potential monetary value” means that the trade secret or information is or is potentially saleable.

### Employee Research

[Subsection 18(1)(b)]

This subsection exempts information obtained through research by an employee of an institu-

tion where the disclosure could reasonably be expected to deprive the employee of priority of publication. Therefore, information obtained through an employee’s research may be exempt from disclosure if:

- the employee intends to publish the information; and
- there is a reasonable expectation that disclosure would deprive the employee of priority of publication of the research.

### Economic Interests

[Subsection 18(1)(c)]

This subsection exempts information where the disclosure could reasonably be expected to prejudice (cause injury to or damage) the economic interests or competitive position of an institution.

The exemption is based on a reasonable expectation of injury to an institution. It requires evidence to substantiate the assertion of injury (Order #162).

“Economic interests” of an institution concern the production, distribution and consumption of goods and services.

*For example:*

Disclosure of information which causes an institution to pay a higher price for goods or services would prejudice its economic interests. The Information and Privacy Commissioner has held that disclosure by a community college of a list of books to be ordered by the college’s book store, could reasonably be expected to prejudice the college’s economic interests as well as its competitive position, (Order #109).

“Competitive position” applies only to those institutions (or organizational parts of institutions) engaged in the supply of goods and services on a competitive basis. Competitive position could be prejudiced without any immediate or direct loss.



### **Financial Interests**

[Subsection 18(1)(d)]

This subsection provides an exemption where disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy.

The exemption is based on a reasonable expectation of injury to the Government of Ontario. It requires evidence to substantiate the assertion of injury (Order #141).

The "financial interests of the Government of Ontario" refers to the Government's financial position, its ability to collect taxes and generate revenues. It also refers to the ability to protect its own interests in financial transactions with third parties, including other governments.

The "ability to manage the economy" is dependent upon a range of activities, such as taxation, fiscal or expenditure policies, economic development initiatives, business incentives or support policies.

### **Negotiating Strategy**

[Subsection 18(1)(e)]

This subsection provides an exemption for positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on, or to be carried on, by or on behalf of the Government of Ontario or an institution.

This subsection is intended to protect the Government's or an institution's ability to negotiate effectively with other parties. The exemption extends to options, fall-back positions and tactics developed as part of the negotiating process.

"Negotiations" in this context means discussions and communications where the intent is to arrive at a settlement or agreement.

*For example:*

Bargaining in relation to labour, commercial or land agreements or settlement of litigation.

This exemption applies to on-going or future negotiations.

### **Personnel or Administration Plans**

[Subsection 18(1)(f)]

A Head may refuse to disclose a record that contains plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or been made public. Once the plan has been put into operation or been made public, it is not covered by this subsection.

This subsection is intended to cover the internal management plans of an institution, such as a reorganization, relocation or creation of an agency prior to implementation.

The relationship of this subsection to subsection 13(2)(i) which concerns proposals to change or establish a program serving the public is discussed on page 4-7.

### **Unfair Advantage**

[Subsection 18(1)(g)]

Subsection 18(1)(g) provides an exemption for information, including the proposed plans, policies or projects of an institution, where disclosure could reasonably be expected to result in:

- premature disclosure of a pending policy decision; or
- undue financial benefit or loss to a person.

"Undue" means more than necessary, improper or unwarranted.

This is a time-limited exemption in that it covers only proposed plans, policies or projects. It applies when one of the two specified results can reasonably be expected to occur due to the disclosure. There must be evidence to substantiate the assertion that one of the two specified results would occur (Order #141).

### **Examination or Test Questions**

[Subsection 18(1)(h)]

This subsection provides an exemption for questions that are to be used in an examination or test for an educational purpose. Once the question is no longer to be used in an examination or test, the exemption does not apply. The exemption does not apply to examinations or tests other than for an educational purpose.



## Submissions under the Municipal Boundary Negotiations Act

[Subsection 18(1)(i)]

This subsection provides an exemption for records containing submissions made under the Municipal Boundary Negotiations Act, 1981, by a party municipality or other body. This exemption is time limited, and may only be invoked until the matter to which the submissions relate has been resolved under the Act.

## Exception to Exemption for Economic and Other Interests

### Product or Environmental Testing

[Subsection 18(2)]

This subsection is an exception to the subsection 18(1) exemption. It requires disclosure of a record that contains the results of certain product or environmental testing. The testing can be carried out either by or for the institution (by another institution or person). The two circumstances when the Head is not required to disclose are when:

- the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee (e.g., a commercial product test); or
- the testing was preliminary or experimental for the purpose of developing methods of testing.

Disclosure of a report of a test carried out on a product for the purpose of the government equipment testing or consumer test report is discussed under subsection 13(2)(e).

## Solicitor-Client Privilege

[Section 19]

Section 19 provides that a Head may refuse to disclose a record that is subject to solicitor-client privilege. The privilege applies to confidential communications between a client (or client's agent) and a lawyer directly regarding the giving or seeking of legal advice or assistance. For

solicitor-client privilege to apply in this context, four criteria must be met:

- there must be a written or oral communication;
- the communication must be of a confidential nature;
- the communication must be between a client (or client's agent) and a legal advisor; and
- the communication must be directly related to seeking, formulating or giving legal advice (Order #49).

Solicitor-client privilege also applies in the context of litigation. Any communication, even of a non-confidential nature between a lawyer and client or a lawyer and third parties, conducted for the purpose of litigation is privileged. In addition, any papers or materials obtained or produced for the purpose of conducting litigation would also be privileged (Order #49). The privilege would apply to past, current and contemplated litigation.

Section 19 also provides that a Head may refuse to disclose a record that was:

- prepared by or for Crown counsel; and
- prepared for use in giving legal advice or in contemplation of litigation.

"Crown counsel" would include any person acting in the capacity of legal advisor to an institution covered by the Act (Order #52).

For a document to be considered "prepared ... in contemplation of litigation", two criteria must be met:

- the dominant purpose for the preparation of the document must be contemplation of litigation; and
- there must be a reasonable prospect of such litigation at the time of the preparation of the document; litigation must be more than just a vague or theoretical possibility (Order #52).

The exemption is *discretionary*.

Only the client is entitled to waive the privilege and thereby authorize disclosure of the record. For such waiver to be effective, there must be

specific evidence of the client's waiver of the solicitor-client privilege. The client's waiver will not be implied from the fact that individuals or institutions other than the solicitor or client have possession of the record (Order #136).

The opinion of an institution's legal advisors should always be sought before this exemption is used.

The public interest provision in section 23 does not apply to this exemption.

### Danger to Safety or Health

[Section 20]

Section 20 provides that a Head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of any individual. This is a *discretionary* exemption.

This section is not intended to restrict an individual's right of access to his/her personal information, except where disclosure could threaten the safety or health of another individual.

The *public interest* override in section 23 applies to this exemption. Where there is an exemption and the Head has exercised his/her discretion against disclosure, the Head must consider whether the public interest outweighs the purpose of the exemption.

Subsection 14(1)(e) provides an exemption where disclosure of a record could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

### Personal Privacy

[Section 21]

Section 21 provides that a request for access to a record must be refused where it would disclose personal information to any person other than the individual to whom the information relates, except in the circumstances specified in this section. It provides an exemption from disclosure of personal information in response to a request for a record under Part II of the Act. The exemption is *mandatory*.

This section is one of the keystone provisions of the Act. It balances the public's right of access to government records and the individual's right of

privacy respecting personal information.

The exceptions in subsection 21(1)(a) through (f) allow personal information to be released in the following six circumstances:

- with the written consent or request of the individual concerned;
- in compelling circumstances affecting health and safety;
- where the personal information has been specifically collected for a public record;
- where disclosure is expressly authorized by a federal or Ontario statute;
- for a research purpose; or
- if the disclosure does not constitute an unjustified invasion of personal privacy.

Subsections 21(2)(a) through (i) list circumstances which the Head should consider in determining whether there has been an unjustified invasion of personal privacy.

Subsection 21(3) sets out when the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy.

Subsection 21(4) lists when disclosure does not constitute an unjustified invasion of personal privacy.

Section 28 provides that before a Head grants access to personal information that the Head has reason to believe might constitute unjustified invasion of personal privacy under subsection 21(1)(f), the person to whom the information relates must be *notified* and given the opportunity to make representations (see page 3-8 for a discussion of the notification procedure).

This exemption is subject to the *public interest* override in section 23. Where this exemption applies, the Head must consider whether or not the public interest outweighs the interest in privacy. Prior to releasing the information in the public interest, the Head must follow the notification requirements in section 28.

Section 42 and 49 also address the disclosure of personal information. Section 42 is found in Part III (Protection of Individual Privacy). It provides a set of rules for institutions regarding the disclosure of personal information. (See page 5-7 and 5-8 for a discussion of section 42). Section 49

concerns the disclosure of personal information to the individual to whom it relates. The exemptions specific to that section are discussed on page 4-25 and 4-26.

## Exceptions to Exemption for Personal Privacy

### Consent

[Subsection 21(1)(a)]

This subsection provides that personal information can be disclosed to someone other than the individual to whom it relates with the prior request or consent of the individual. The record must be one to which the individual is entitled to have access.

The request or consent should be in writing and received before the personal information is disclosed.

To determine whether the individual "is entitled to have access" to the record in question, reference should be made to Part III of the Act, and particularly sections 47, 48 and 49.

### Compelling Circumstances

[Subsection 21(1)(b)]

Personal information may be disclosed to someone other than the individual to whom it relates in compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the information relates.

Circumstances are "compelling" when either there is no other way to obtain personal information affecting health or safety, or there is an emergency situation where the delay in obtaining the information would be injurious to someone's health or safety. The determination of when compelling circumstances exist is left to the discretion of the Head.

Where personal information is disclosed under this subsection, upon disclosure, notification must be mailed to the last known address of the individual to whom the information relates. The last known address means the most recent address, if any, on file with the institution which disclosed the personal information. If the address is on file, the institution should attempt to find out the address of the individual from the

person who made the request. (Subsection 42(h), page 5-9, concerns compelling circumstances.)

### Public Record

[Subsection 21(1)(c)]

Personal information may be disclosed to a person other than the individual to whom it relates when it is collected and maintained specifically as a public record.

**DEFINITION: A public record refers to a collection of personal information to which all members of the public have equal access.**

Public records are created to allow the public, in specific circumstances, access to personal information which would not normally be available. The public's "need to know" must outweigh the privacy protection rights of the individuals to whom the information relates.

Personal information is usually maintained in public records for the following reasons:

- To allow for the proper administration of programs, activities and services, eg. list of electors, assessment roll.
- To promote government accountability, by providing information relating to the issuance of licences, permits, government contracts, etc.
- To promote informed choice and consumer protection, eg. by making available records such as land registry records, assessment rolls, bills of sales registration, personal property security registration system, records of holders of specific licences and permits etc.
- To allow for the fair determination of rights.

### KEY FEATURES OF PUBLIC RECORDS

1. The record must be equally available to all members of the public. A collection of personal information to which only some people have access while others do not, would not qualify as a public record as contemplated in the Act.
2. Public availability does not mean the information is necessarily accessible free of charge. There are a number of existing public records which require the payment of fees for access.



3. When a public record of personal information is created or maintained, public availability does not have to be the only purpose for collecting and maintaining the information, for example, the land tax register is used for the administration of the property taxing program, however, the information contained in these records is also needed by individuals for a number of business-related purposes.
4. Access to a public record does not necessarily mean it is readily available without some identifying information. There are situations where an individual must provide the institution with specific details or identifiers to allow the institution to retrieve the record. The fact that existing systems for access are not as convenient or as cost effective to a requester, does not mean that the records are not publicly available. (See Order #159)
5. Personal information appearing in a public record in one context does not necessarily render the information public in another context, eg. personal information relating to criminal convictions may be publicly available through court records, but a record of criminal convictions in a personnel or security file would not thereby be a public record.
6. There can be instances where only certain elements of a collection of personal information are maintained as a public record, while other parts are not available to the public.

### HOW PUBLIC RECORDS ARE CREATED

In many jurisdictions, public records of personal information are created and maintained through specific statutes or regulations. However, in Ontario, public records can be created either by:

- (a). Statute
- (b). Policy Decisions by Institution
- (a) *Statute*

Statutes, regulations or by-laws designating public records generally contain terms and conditions regarding the administration of the information. Often, the authority to charge fees, times and location of access, are prescribed in the legislation.

### (b) *Policy Decisions by Institutions*

There are situations where public records exist without a legislative basis. The institution, through its dealings with the public, may determine that there is a legitimate "public need to know" which outweighs the privacy rights of the individuals to whom the information relates. In such cases, the institution may establish a policy designating the record public. The major factors in this decision would be the privacy protection rights of individuals and whether or not release of the information can be treated as a "justified" invasion of personal privacy.

### Factors to Consider

The following are some of the factors to consider in the creation and maintenance of public records:

- Does the public "need to know" outweigh the privacy rights of the individuals concerned?
- Will the release of the information foster informed choice?
- Will the information be accessible to everyone?
- Does the public need the information to assist in the conduct of business?
- Would the public availability of the information constitute an unjustified invasion of personal privacy?
- Is the personal information particularly sensitive?
- Is the information relevant to a fair determination of rights of the requester?

While the Act is silent on statutory requirements governing the creation and maintenance of public records, the balance between the need for disclosure and the right of individuals to privacy must be carefully weighed. In such circumstances the balancing test (see personal privacy section of the Act), outlining the criteria in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, can play an important role in helping an institution decide if a collection of personal information will, or will not, be available to the public as a public record.



**[Subsection 21(1)(d)]**

Personal information may be disclosed to a person other than the individual to whom it relates where a statute of Ontario or Canada expressly authorizes the disclosure.

The authority to disclose must be stated in the statute and not simply be an administrative policy of the institution.

*For example:*

Section 14 of the Business Practices Act permits information gained during an inspection or investigation under that Act to be disclosed to inform a consumer of an unfair business practice and any information relevant to the consumer's rights.

**Research Agreements****[Subsection 21(1)(e)]**

The Head of an institution may disclose personal information that identifies an individual to a person other than the individual to whom it relates for a research purpose, when certain conditions are met.

Research purposes are distinct from administrative, operational or regulatory uses of personal information in that research uses do not directly affect the individual to whom the information relates and do not relate to the usual administration of a program. Program audits, evaluations and operational reviews are not research for the purposes of subsection 21(1)(e).

The section covers disclosure to researchers receiving grants, consultants conducting contractual research and independent researchers.

Requests for disclosure of personal information for research purposes under subsection 21(1)(e) are treated as requests under the Act.

Where an individual's consent for use of their personal information for research is obtained by the institution, disclosure is governed by subsection 42(b) of the legislation dealing with consent to disclosure.

Access to personal information by researchers who are employees of an institution is covered by section 41 and subsection 42(d) of the Act

dealing with use and disclosure of personal information.

The Head must determine that conditions are appropriate for the disclosure of personal information for a research purpose. The following conditions must be met:

- the disclosure must be consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained. If the information was provided with a reasonable expectation of confidentiality, access should not be granted without the consent of the individual; and
- the research purpose for which the disclosure is to be made cannot be reasonably achieved unless the information is provided in a form which allows individuals to be identified. The Head of the institution must be satisfied that the objective necessitates individual identification.

In addition, the person who is to receive the record must agree to comply with conditions relating to security and confidentiality prescribed by regulation.

The minimum conditions relating to security and confidentiality are contained in a form (Appendix IV). Before personal information can be disclosed pursuant to subsection 21(1)(e), the completed form must be agreed to and signed by the researcher and the Head (or his or her delegate). Both researcher and the institution should retain a copy of the signed agreement.

Although minimum terms are prescribed by regulation, the institution may require the researcher to agree to confidentiality before disclosing the personal information.

Effective January 1, 1991, there is no requirement to file the agreement with, or seek the approval of, the Responsible Minister.

**Unjustified Invasion of Personal Privacy****[Subsection 21(1)(f)]**

This subsection provides that before the Head of an institution may disclose personal information to someone other than the individual to whom it relates, he/she must determine that such disclo-

sure would not constitute an unjustified invasion of personal privacy.

Subsections 21(2), (3) and (4) are concerned with defining what constitutes an unjustified invasion of personal privacy. Subsection 21(2) details some of the factors to be considered. Subsection 21(3) lists some classes of personal information where disclosure is presumed to constitute an unjustified invasion of privacy. Subsection 21(4) modifies that presumption by indicating circumstances in which disclosure of such personal information does not constitute an unjustified invasion of privacy.

### **Factors to be Considered**

[Subsection 21(2)]

In determining whether disclosure of personal information to someone other than the person to whom it relates constitutes an unjustified invasion of privacy, the Head must consider all the relevant circumstances. All of the circumstances enumerated in subsections 21(2)(a) through (i) should at least be considered in deciding whether or not to disclose personal information.

Some of the enumerated circumstances in subsection 21(2) favour disclosure while others favour denial of access. There is no indication of the relative weight to be attached to any of the circumstances. Unless one of the enumerated circumstances clearly outweighs the others, a global judgement should be made by the Head after considering all of them. The list is not exhaustive and other relevant circumstances may be considered.

"Relevant circumstances" have a natural and logical application to the personal information in question and tend to demonstrate that the personal information should or should not be disclosed.

*For example:*

A person's motive in seeking access to personal information about another individual may sometimes be relevant in deciding whether disclosure would constitute an unjustified invasion of personal privacy.

### **Public Scrutiny**

[Subsection 21(2)(a)]

One of the relevant circumstances that the Head must consider in determining whether disclosure constitutes an unjustified invasion of personal privacy is whether the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny. In such cases, access to information and public scrutiny of the internal workings of government will prevail over the protection of individual privacy.

### **Public Health and Safety**

[Subsection 21(2)(b)]

In determining whether disclosure constitutes an unjustified invasion of personal privacy, the Head must consider whether access to the personal information may promote public health and safety.

*For example:*

The identification of the location of a discharge or emission or some other potential danger to the environment may necessitate the disclosure of personal information.

### **Informed Choice**

[Subsection 21(2)(c)]

In determining whether disclosure constitutes an unjustified invasion of personal privacy, the Head must consider whether access to the personal information will promote informed choice in the purchase of goods and services.

*For example:*

Disclosure of an evaluation of a supplier's or consultant's performance could disclose personal information.

### **Fair Determination of Rights**

[Subsection 21(2)(d)]

In determining whether the disclosure constitutes an unjustified invasion of personal privacy, the Head must consider whether the personal information is relevant to a fair determination of rights affecting the requester. There may be occasions where the requester requires access to personal information about someone else in

order to assist the requester in obtaining a determination of his/her rights.

### **Unfair Exposure to Harm**

[Subsection 21(2)(e)]

The Head must consider whether the individual to whom the information relates will be exposed unfairly to pecuniary or other harm. Other provisions of the Act exempt records on the basis that disclosure may threaten someone's life, health or safety (subsection 14(1)(e), section 20). The words "other harm" should therefore be interpreted narrowly to mean injury of a similar nature to pecuniary harm, such as harm to a business interest.

### **Highly Sensitive Information**

[Subsection 21(2)(f)]

The Head must consider whether the personal information is highly sensitive to the individual to whom it relates.

### **Inaccurate or Unreliable Information**

[Subsection 21(2)(g)]

The Head must consider whether the personal information is not likely to be accurate or reliable.

Subsection 40(2) obligates institutions to take reasonable steps to ensure that personal information is not used unless it is reasonably accurate and up to date (see page 5-5).

### **Information Supplied in Confidence**

[Subsection 21(2)(h)]

The circumstance that the Head must consider is whether the personal information has been supplied by the individual to whom it relates in confidence. This subsection does not include personal information supplied in confidence by one individual about another.

### **Unfair Damage to Reputation**

[Subsection 21(2)(i)]

The Head must consider whether the disclosure may unfairly damage the reputation of any person referred to in the record.

## **Presumed Invasion of Privacy**

[Subsection 21(3)]

Subsection 21(3) provides that disclosure of certain classes of personal information is presumed to constitute an unjustified invasion of personal privacy. The main characteristics of these classes are that they concern intimate, sensitive details of personal life or they give rise to a strong expectation that privacy will be protected.

The presumption created by subsection 21(3) can be rebutted or modified after consideration of the factors listed in subsection 21(2). The result is that disclosure may no longer be presumed to be an unjustified invasion of personal privacy, and disclosure may take place.

Consideration of subsection 21(2) may also have the opposite effect, of course. Even where disclosure is not presumed to be an unjustified invasion of personal privacy within the language of subsection 21(3), the factors listed in subsection 21(2) should be considered to determine whether disclosure may still be an unjustified invasion of someone's privacy.

*For example:*

Disclosure of a list of names and addresses compiled by an institution for the purpose of a mailing list is not a presumed invasion of privacy under subsection 21(3), but is still subject to the balancing test. The criteria mentioned in subsection 21(2) must be considered by the Head to determine if disclosure of the mailing list is an unjustified invasion of personal privacy.

### **Medical Record**

[Subsection 21(3)(a)]

Disclosure of personal information that relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is presumed to be an unjustified invasion of personal privacy.

### **Violation of Law**

[Subsection 21(3)(b)]

Disclosure of personal information that was compiled and is identifiable as part of an investigation into a possible violation of law, except to



the extent that disclosure is necessary to prosecute the violation or continue the investigation, is presumed to be an unjustified invasion of personal privacy.

Section 14 of the Act provides an exemption for records relating to law enforcement activities. That section is complemented by this subsection which protects the privacy of an individual who has been investigated for a possible violation of law, but whose case has not yet been disposed of by a court.

The phrase "violation of law" includes offences under the Criminal Code, and other federal statutes and regulations, as well as breaches of provincial statutes and regulations, and municipal by-laws.

This exception to the presumption of invasion of privacy allows disclosure to the extent necessary to prosecute the violation of law or to continue the investigation. This exception recognizes that an institution which is in possession of evidence of a possible violation of law must have the power to disclose that evidence to a police force or other law enforcement agency, and to the Crown attorney or other person responsible for prosecuting the offence.

### **Eligibility for Social Programs**

[Subsection 21(3)(c)]

Disclosure of personal information which relates to eligibility for social service or welfare benefits, or to the determination of benefit levels is presumed to be an unjustified invasion of personal privacy.

### **Personal History**

[Subsection 21(3)(d)]

Disclosure of an individual's employment or educational history is presumed to be an unjustified invasion of personal privacy.

### **Tax Returns**

[Subsection 21(3)(e)]

Disclosure of personal information obtained on a tax return or gathered for the purpose of collecting a tax is presumed to be an unjustified invasion of personal privacy.

### **Financial History**

[Subsection 21(3)(f)]

Disclosure of most types of information about the personal financial status of an individual is presumed to be an unjustified invasion of personal privacy. Specific exceptions to this presumption are found in subsections 21(4)(a) and (b).

### **Personnel Evaluations**

[Subsection 21(3)(g)]

Disclosure of personal information consisting of personal recommendations or evaluations, character references or personnel evaluations is presumed to be an unjustified invasion of personal privacy.

### **Race, Ethnic, Origin, Religion or Sexual Orientation**

[Subsection 21(3)(h)]

Disclosure of personal information which would reveal an individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations is presumed to be an unjustified invasion of privacy. These are alternatives as indicated by use of the word "or". A record which reveals a political belief falls within the subsection, even if it does not reveal a political association.

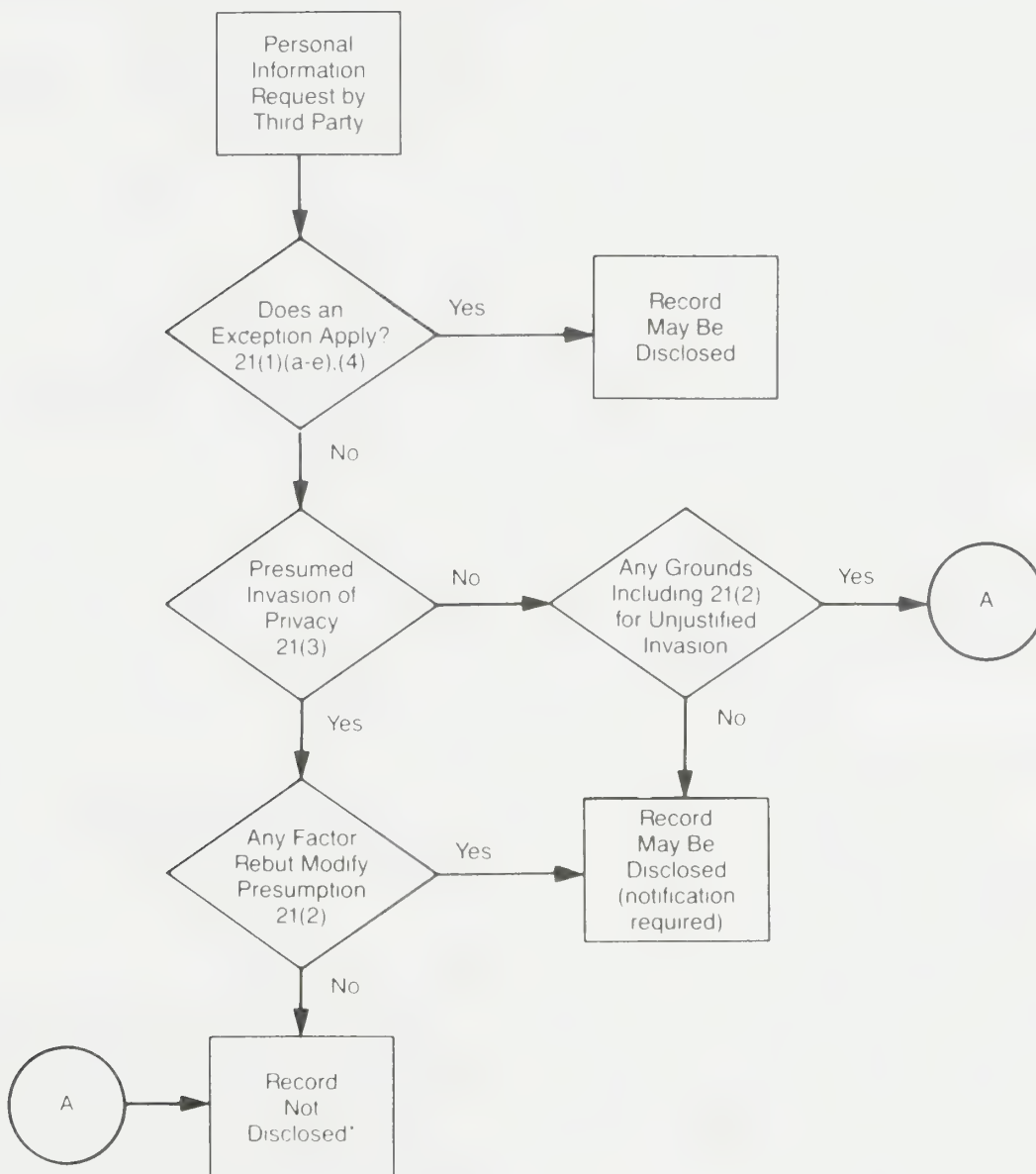
### **Limitation on Presumption of Unjustified Invasion of Personal Privacy**

[Subsection 21(4)]

Subsection 21(4) places certain limits on the presumption of invasion of personal privacy created by subsection 21(3). Disclosure of the types of personal information mentioned in subsections 21(4)(a) through (c) does not constitute an unjustified invasion of personal privacy. Therefore, a record that fits within those subsections must be disclosed under subsection 21(1)(f) in response to an access request, unless some exemption other than section 21 is applicable.



**Figure IV**  
**Personal Privacy (Section 21)**  
**Guide to Decision**



\*Note. Head may refuse to confirm or deny existence of record 21(5)

### **Salary Range of Employees and Officers**

[Subsection 21(4)(a)]

Disclosure of the classification, salary range and benefits, or employment responsibilities of an officer or employee of an institution or a member of the staff of a minister is not an unjustified invasion of personal privacy.

The subsection refers to “salary range”, not salary.

“Officer or employee” includes all those persons who work for an institution, including those appointed by order-in-council or who perform their duties under a contract of employment.

### **Personal Service Contracts**

[Subsection 21(4)(b)]

Disclosure of the financial or other details of a contract for personal services between an individual and an institution, other than those which create an employer/employee relationship, is not an unjustified invasion of personal privacy.

*For example:*

A contract in which an individual is hired to perform professional services for an institution in respect of particular problem or project would be included.

### **Licences or Permits**

[Subsection 21(4)(c)]

Disclosure of details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a Head is not an unjustified invasion of personal privacy under certain circumstances.

The purpose of this limitation on the presumed invasion of privacy is to ensure that the public has access to information about licensing or the granting of benefits where the licensee or recipient of the benefit represents a significant proportion of the total number of persons in Ontario who are similarly licensed or who have received a similar benefit.

The granting of a licence or permit or a financial benefit, at an institution's discretion, may give a significant economic advantage to one individual over others who are in the same business or

other activity.

Where an individual represents one per cent or more of all persons and organizations who have received this type of economic advantage, and if the value of the benefit to an individual is one per cent or more of the total value of similar benefits to other persons and organizations, disclosure of details of the benefit is not an invasion of the individual's privacy.

The “value of the benefit” and the “total value of similar benefits” would be determined by dollar value where feasible.

### **Refusal to Confirm or Deny Existence of a Record**

[Subsection 21(5)]

Where the Head refuses to give access to a record on the grounds that to do so would be an unjustified invasion of personal privacy, the Head may also refuse to confirm or deny the existence of the record.

*For example:*

Confirmation that an institution was in possession of a record relating to the treatment of an individual for an illness could be an unjustified invasion of the individual's personal privacy, even if access to the record itself was refused.

This subsection is similar to subsection 14(3) relating to law enforcement records. Notification to the requester under subsection 29(2) would be required (see page 3-8).

### **Guide to a Decision**

In making a decision under section 21, the following questions may be useful as a guide:

1. Do any of the exceptions in subsections 21(1)(a) through (e) or 21(4) apply? If so, then the personal information is disclosed under the relevant exception.
2. If “no” to question 1, is disclosure of the personal information presumed to be an unjustified invasion of personal privacy by subsection 21(3)?

3. If “yes” to question 2, is there something in subsection 21(2) that rebuts or modifies the presumption? If so, the record may be disclosed (subsection 21(1)(f)).
4. If the answer to question 2 is “no”, is there anything in subsection 21(2) that makes disclosure of the personal information an unjustified invasion of personal privacy in any event? If so, the record must not be disclosed.

(See Figure IV at page 4-27.)

It should be noted that under subsection 21(5), the Head may refuse to confirm or deny the existence of a record.

In addition, before a Head grants access to information that he/she has reason to believe might constitute an unjustified invasion of personal privacy under subsection 21(1)(f), the person to whom the information relates must be notified and given the opportunity to make representations.

## Published Information

[Section 22]

The Head of an institution may refuse disclosure of a record where:

- the record or the information contained in the record has been published or is currently available to the public; or
- the Head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety (90) days from the date of the request or within such further period as may be necessary for printing or translating the material for the purpose of printing it.

A production schedule, which includes target dates, would provide “reasonable grounds” for the Head to believe the information will be published and publically available within ninety (90) days, or such additional time required for printing or translation.

Any published records, not only those published by the institution, could be included.

Whenever this exemption is relied upon, the Head has a duty to inform the requester of the

specific location for obtaining the records or information in question, (Order #123). This exemption may be relied on even where public access to the record is not as convenient or as cost effective for the researcher as it may have been if access has been granted by the institution (Order #159).

This exemption is *discretionary*.

The public interest provision in section 23 does not apply.

## Exemptions to Disclosure of Personal Information

[Section 49]

While most of the exemptions are in Part II of the Act (Access to Information), section 49 falls in Part III (Protection of Individual Privacy).

Section 49 sets out the grounds for refusal to disclose personal information to the individual to whom the information relates. The grounds are enumerated in subsections 49(a) through (f). In contrast section 21 sets out the circumstances where personal information may be disclosed to a requester other than the individual to whom the personal information relates.

The decision to refuse to disclose personal information to the individual to whom it relates is *discretionary*.

The principle of severability applies to disclosure of personal information, as it does to general information. Subsection 48(2) allows the information which is not to be disclosed to be severed in accordance with subsection 10(2).

### General Exemptions

[Subsection 49(a)]

This subsection provides that an individual's right of access to personal information about himself/herself is generally subject to the exemptions applying to general information. This includes the exemptions in sections 12 through 20 inclusive, and section 22 (but not section 21, which applies to the disclosure of an individual's personal information to a third party).



### **Unjustified Invasion of Personal Privacy**

[Subsection 49(b)]

A Head may refuse to disclose personal information to the individual to whom the information relates where the disclosure would constitute an unjustified invasion of another individual's personal privacy. Subsection 21(2) and (3) provide the test for unjustified invasion of personal privacy and guidance in interpreting this subsection.

There may be personal information about more than one individual in the same record. Severing may not be feasible because close family or business ties would allow individuals other than the requester to be identified despite severing. In such a case, if disclosure would invade the personal privacy of an individual other than the requester, disclosure may be refused. Similarly, statements and/or allegations contained in records of an investigation constitute personal information about both the person making the statement and the person about whom the statement is made. Access to such statements may be a justified invasion of privacy where such access is relevant to "a fair determination of the rights affecting the person who made the request" (Order #121), or access may be denied if disclosure would result in an unjustified invasion of privacy of the person making the statement, (Order #37).

There is a requirement for notification to the individual whose personal privacy may be invaded, which is contained in subsection 28(1)(b) and discussed on page 3-7.

### **Revealing a Confidential Source**

[Subsection 49(c)]

The Head may refuse to disclose personal information to the individual to whom it relates when it is evaluative or opinion material where disclosure would reveal the identity of a source who furnished information to the institution. The information must have been provided in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence. The evaluative or opinion material must be compiled solely for the purpose of determining suitability, eligibility or qualifications for employment, for appointments to public or judicial office, or for the awarding of govern-

ment contracts and other benefits.

The information to which the exemption applies is only that information which would reveal the identity of the source.

"Information furnished to the institution" indicates that the source is someone outside the institution.

"Other benefits" includes the conferring of awards, grants, or similar benefits.

### **Medical Information**

[Subsection 49(d)]

The Head of an institution may refuse to disclose medical information to the individual to whom it relates where disclosure could reasonably be expected to prejudice the individual's mental or physical health. This is a discretionary provision and is intended only for those circumstances where disclosure could cause injury or prove detrimental to the mental or physical health of the individual. It is not intended as a general provision for withholding access to medical information. Wherever possible, an individual should be granted access to his/her medical information.

Consultation with a medical practitioner or other appropriate professional is advised to determine whether there is a reasonable expectation of prejudice to the individual's mental or physical health. When the information is disclosed, the institution may have the medical practitioner or other appropriate professional present to provide explanations and to answer questions.

(See also subsection 65(2) which provides that the Act does not apply to certain records of a patient in a psychiatric facility, as defined under the Mental Health Act.

### **Correctional Records**

[Subsection 49(e)]

The Head may refuse to disclose personal information in a correctional record to an individual where disclosure could reasonably be expected to reveal information received in confidence.

Correctional records, such as records of inmates in provincial correctional facilities, may contain personal information which identifies informants or may contain information related to



active law enforcement investigations. Where disclosure would reveal identity of the source or would reveal investigative or other information supplied in confidence, the Head may refuse to disclose the personal information.

Subsection 14(1)(d) provides a similar exemption for law enforcement records.

Subsection 14(2)(d) provides an exemption for records containing information about persons under the control or supervision of a correctional authority.

### **Research or Statistical Record**

[Subsection 49(f)]

The Head of the institution may refuse to disclose to the individual a research or statistical record. These records contain personal information collected and used exclusively for research or statistical reporting which does not directly affect the individual. If the information is used or disclosed for any other purpose, it is no longer exempt from disclosure to the individual to whom it relates.

## **Confidentiality Provisions**

[Section 67]

Subsection 67(2) provides that the Freedom of Information and Protection of Privacy Act prevails over a confidentiality provision in any other Act, unless either Act specifically provides otherwise.

The following confidentiality provisions in other statutes prevail over the Act:

- **Assessment Act, R.S.O. 1980, c. 31, s. 57(1).**
- **Child and Family Services Act, 1984, c. 55, ss. 41(8), 41(9), 41(10), 70(5), 71(6), 72(11), 112(6), 158a.**
- **Colleges Collective Bargaining Act, R.S.O. 1980, c. 74, s. 77(6).**
- **Commodity Futures Act, R.S.O. 1980, c. 78, s. 10.**

- **Crown Employees Collective Bargaining Act, R.S.O. 1980, c. 108, s. 51(1).**
- **Courts of Justice Act, 1984, c. 11, s. 147(2).**
- **Labour Relations Act, R.S.O. 1980, c. 228, s. 111(1).**
- **Pay Equity Act, 1987, c. 34, s. 32(4).**
- **Securities Act, R.S.O. 1980, c. 466, s. 14.**
- **Statistics Act, R.S.O. 1980, c. 480, s. 4(2).**
- **Vital Statistics Act, R.S.O. 1980, c. 524, s. 24(2).**

As a result, on January 1, 1990 all statutory confidentiality provisions ceased to be effective as non-disclosure provisions with the exception of those provisions cited in the Freedom of Information and Protection of Privacy Amendment Act, 1989 (as listed above).

The Management Board Directive 8-1, Freedom of Information and Privacy, requires that "any proposed statutes, regulations or any proposed amendments to legislation that affect the Freedom of Information and Protection of Privacy Act are to be forwarded to the Freedom of Information and Privacy Branch, Management Board Secretariat, for review and comment prior to presentation to a Cabinet Committee". As a matter of policy, confidentiality provisions that operate notwithstanding the Act are to be specified in the Freedom of Information and Protection of Privacy Act, 1987.









# Privacy Protection



# Privacy Protection

## Introduction

Part III of the Freedom of Information and Protection of Privacy Act concerns the protection of individual privacy. The privacy provisions are based on two key principles:

- that an individual has the right to have control over his/her own personal information; and
- that standards and controls in the collection, retention, use and disclosure of personal information are necessary.

The Act requires that personal information held by institutions be protected from unauthorized use/disclosure and regulates the collection, retention and disposal of personal information.

The Act also provides an individual with a right of access to his/her own personal information. To assist the individual in exercising his/her right of access, personal information banks held by institutions are described and listed in the Directory of Records published annually by the Responsible Minister.

The provisions of Part III do not apply to personal information that is maintained for the purpose of creating a record that is available to the general public (section 37). Such a record must be one to which all members of the public have equal access. (See subsection 21(1)(c) for further discussion of records available to the general public).

## Collection of Personal Information

[Section 38]

This section expands the definition of personal information for the purpose of collection and sets out the authority necessary in law for the collection of personal information.

### Expanded Definition of Personal Information

[Subsection 38(1)]

For purposes of sections 38 and 39, the definition of personal information found in subsection

2(1) of the Act is expanded to include non-recorded information, that is personal information which is collected verbally. This means that the institution must have the authority to collect that information, and the information must be collected directly from the individual, unless one of the exceptions in section 39 of the Act applies.

*For example:*

Personal information may be collected by an institution in the course of a discussion or interview. The same rules for collection of personal information apply in this circumstance.

### Authority to Collect

[Subsection 38(2)]

This subsection sets out the conditions under which personal information may be collected. The collection of information requires action on the part of the institution. Personal information may be submitted to an institution by an individual, at his/her own initiative, without the information being requested by the institution. Receipt of this information by the institution is not collection. However, any subsequent request by the institution for additional information would constitute collection, and this collection would be governed by the provisions of the Act.

*For example:*

If an individual submits a resume at his/her own initiative, the institution is not considered to be collecting personal information. Resumes submitted in response to a call for applications, however, are collected by the institution and authorization for collection is subject to subsection 38(2).

One of three conditions must exist in order for personal information to be collected:

- the collection of personal information is expressly authorized by statute. The authority to collect must be in a statute rather than in a regulation; or
- the information collected is used for purposes of law enforcement, as defined in subsection 2(1); or
- the collection is necessary for the proper ad-

ministration of a lawfully authorized activity. The activity may be authorized by statute, regulation or order-in-council.

By implication, the authority to collect personal information is limited to the collection of necessary information.

## **Manner of Collection**

[Subsection 39(1)]

This subsection governs the manner of collection of personal information. It requires that personal information be collected directly from the individual to whom it relates, unless certain circumstances enumerated in subsections 39(1)(a) through (h) exist.

### **Authority of Individual**

[Subsection 39(1)(a)]

An individual may authorize another manner of collection of personal information. Authorization would ordinarily include:

- the identification of the personal information to be collected;
- the source from which that personal information may be collected; and
- the institution which is to collect the personal information.

A record should be kept with the date and details of the authorization.

The notice requirements in subsection 39(2) should be fulfilled at the same time as the authorization under subsection 39(1)(a) is obtained. (See page 5-3).

### **Disclosure Under Section 42**

[Subsection 39(1)(b)]

Personal information may be collected by one institution from another institution where the disclosing institution has authority to disclose under section 42 of the Freedom of Information and Protection of Privacy Act or under section 32 of the Municipal Freedom of Information and Protection of Privacy Act.

### **Authority of Commissioner**

[Subsection 39(1)(c)]

The Commissioner may authorize collection from a source other than the individual. The Commissioner's authority may be sought where the institution believes it is not possible or practical to collect the personal information directly or to obtain authorization under subsection 39(1)(a). Subsection 59(c) provides this power to the Commissioner.

### **Consumer Reporting Act**

[Subsection 39(1)(d)]

This subsection authorizes an institution to collect personal information contained in a consumer report that is prepared in accordance with the Consumer Reporting Act. A complete list of information which may be included in such a report is contained in subsection 8(1)(d) of the Consumer Reporting Act.

### **Honour of Award**

[Subsection 39(1)(e)]

This subsection authorizes an institution to collect personal information indirectly for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service.

*For example:*

Awards of this type include the Order of Ontario, the Province of Ontario Medal for Good Citizenship and the Province of Ontario Medal for Police Bravery.

### **Courts and Tribunals**

[Subsection 39(1)(f)]

This subsection authorizes an institution to collect personal information indirectly for the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal.

A judicial or quasi-judicial tribunal is a body constituted under a statute with power to decide the legal rights of a person or the eligibility of a person for a benefit or licence. Such tribunals are required to adhere to standards of procedural fairness similar to the procedures of courts.



*For example:*

This type of tribunal includes the Ontario Municipal Board, the Ontario Labour Relations Board, the Liquor Licence Board of Ontario, the Commercial Registration Appeal Tribunal, the Health Disciplines Board, the Social Assistance Review Board and the Crown Employees Grievance Settlement Board.

In some cases after personal information has been collected, no proceeding takes place because, for example, there is insufficient evidence. This subsection applies as long as the purpose of the collection is to determine whether a proceeding can be commenced before a court or tribunal.

**Law Enforcement**

[Subsection 39(1)(g)]

Personal information which is collected for the purpose of law enforcement may be collected from a source other than the individual. Law enforcement is defined in subsection 2(1) of the Act.

**Statutory Authority**

[Subsection 39(1)(h)]

A statute or regulation may authorize collection of information from a source other than the individual.

*For example:*

Subsection 6(1)(a) of the Support and Custody Orders Enforcement Act authorizes indirect collection of specific types of personal information.

Section 35 of the Health Insurance Act permits health care providers to collect personal information about family members from an OHIP subscriber and provide it to the Ministry of Health.

**Notification Requirements**

[Subsection 39(2)]

This subsection requires that when personal information is collected on behalf of an institution either directly from the individual to whom it

relates or indirectly from another source, the Head must, unless notice is waived by the Responsible Minister, inform the individual to whom the information relates of:

- the legal authority for the collection;
- the principal purpose(s) for which the information is to be used; and
- the address and telephone number of an official in the institution who can answer questions about the collection.

Notice of legal authority should include reference to the specific Act and section which authorized collection, or the authorized activity or program under which the information is being collected.

How the personal information is used on a regular basis should be consistent with the allowable use of personal information (section 41). The regular uses of personal information should also be consistent with the statement in the Directory of Records describing the use and disclosure of each bank of personal information (subsections 45(d) and (e)).

Where the information is collected directly from the individual, notice should be given to the individual at the time of collection. Where personal information is collected on forms, the notice may be provided on the form.

A notification should be included on a form where the principal purpose of the form is to collect personal information and the information is used for the purpose of making a decision affecting the individual. Where the personal information is incidental to the purpose of the form, a notification may not be required.

A notification on a form might read as follows:

Personal information contained on this form is collected under the authority of the Public Service Act, R.S.O. 1980, c.418, s.10 and will be used to determine eligibility for employment in the civil service. Questions about this collection should be directed to: Director, Human Resources Services, 151 Bloor Street, Toronto, (416) 555-7878.

Notice of collection is not required where an institution receives personal information which it neither asked to receive nor actively sought. Unsolicited resumes, for instance, may be sent to

an institution by individuals on their own initiative and not in response to a job competition. If, however, the institution uses these resumes by placing them in a inventory or by considering them at a later date, then the institution is obliged to notify the individual under subsection 39(2). If the institution's practice is to place unsolicited resumes in an inventory, notice of collection could be provided in a letter of acknowledgement.

Where personal information has been collected from a source other than the individual to whom it relates, the individual must be given notice as soon as possible after the collection.

Where personal information is collected and will be used by or disclosed to another institution, the individual should be given notice of:

- the legal authority that the first institution has for the collecting the information;
- the principal purposes for which it will be used by that institution;
- the address and telephone number of an official in that institution who can answer questions; and
- the fact that the information will be used by a second institution and the name of that institution.

Information concerning the second institution's legal authority, the purpose for which the information will be used and the contact person in that institution should be included in the Directory of Records. If the individual is not informed at the time of collection that the information will be used by another institution, then the second institution must provide notice to the individual.

Even where indirect collection is permitted under subsection 39(1), notice to the individual is required. Subsection 39(2) provides, however, that the requirement for notice can be waived by the Responsible Minister. Each request for a waiver is considered on its merits. Waivers will normally be requested for a class or group of individuals rather than one individual.

Some of the criteria for consideration in determining whether to grant a waiver of notice are as follows:

- Notice Frustrates Purpose of Indirect Collection:

In some cases, to give notice to the individual where information is collected indirectly for certain programs, or for investigations which do not qualify as law enforcement, would undermine the objectives or frustrate the purpose of those programs and investigations. The circumstances which necessitate indirect collection may be considered in determining whether a waiver will be granted.

- Statutory Authority for Indirect Collection:

Where there is statutory authority for indirect collection, the circumstances that make indirect collection necessary may be considered in determining whether the notice requirements will be waived.

- Administrative Burden and Cost:

A heavy administrative burden coupled with high costs may justify a waiver in certain circumstances. The administrative burden and the costs would be excessive when weighed against the requirement or need for notice in the particular case. An alternative, however, such as posting a notice or publishing a notice in the newspaper, might be appropriate in these circumstances.

- Impossibility/Difficulty:

There can be circumstances where it is impossible or very difficult to provide notice. Those circumstances may be considered in determining whether the notice requirements will be waived.

- Authorization of Information and Privacy Commissioner:

Where the Commissioner has authorized collection of personal information other than directly from the individual, the circumstances which the Commissioner considered in authorizing indirect collection may be considered in determining whether a waiver of notice will be granted.

- Subsequent Collection by Another Institution:

Where personal information is collected and will be disclosed to another institution in accordance with section 42, the individual is to be given the required notice by the first institution and a statement the information will be

disclosed to the second institution. No waiver is required in these circumstances since the first institution has complied with section 39(2) for both institutions.

Where the first institution does not advise the individual of the disclosure to the second institution, notice will usually be required. There may, however, be circumstances where to provide notice would be inconsistent with the disclosure in section 42. In such circumstances, waiver may be appropriate.

Therefore, when a second ministry or agency obtains the information, and the individual was already notified in respect of the first collection, it may be appropriate to waive further notification requirements.

This list is not exhaustive and other criteria may be considered in determining whether a waiver of notice will be granted.

To request a waiver of notification, complete the *Request for Waiver of Notice to Individual of Collection of Personal Information* (see Appendix V).

Further information on the procedure can be obtained from the Freedom of Information and Privacy Branch, Management Board Secretariat.

## Exception to Notice Requirements

[Subsection 39(3)]

This subsection provides an exception to the notice requirements in subsection 39(2). Where personal information is collected for purposes of law enforcement, the individual to whom the information relates does not need to be informed.

## Retention of Records

[Subsection 40(1)]

This subsection provides the authority to prescribe by regulation the retention period for personal information.

The regulations prescribe a minimum one year retention period for personal information following the last date of use of the information. This is a minimum period, and other operational or legal considerations may require a longer retention period. The minimum retention period is intended to ensure that an individual has a

reasonable length of time after the use by an institution of his/her personal information to obtain access to it.

Where information is updated, the outdated information must be retained in some form of back-up, so that the outdated information is available for the prescribed retention period of one year. The back-up documentation does not necessarily need to be stored in the same location as the current information.

The Management Board Directive (7-9) on Records Management provides ministries and certain agencies with policies and procedures for scheduling the retention and disposal of records.

## Accuracy of Records

[Subsection 40(2)]

The head shall take reasonable steps to ensure that personal information is not used by the institution unless it is accurate and up to date.

Reasonable steps involve checking for accuracy, including errors of omissions, at the time the information is collected. Any verification of information should be documented.

Although personal information may be accurate and up to date when collected, it may become outdated and, therefore, inaccurate. Before personal information is used, the following questions may be useful in assessing its accuracy:

- Was the information collected directly from the individual to whom it relates?
- Was the accuracy of the information verified at the time it was collected? (e.g., Was a birth certificate viewed to verify age?)
- Is the proposed use of the information consistent with the purpose for which it was collected?
- How relevant is the personal information to the current use? (e.g., If the information is used to determine eligibility for benefits based on age, the date of birth may be the most relevant piece of information.)
- What is the likelihood that the information is outdated?



## Exception to Accuracy Requirement

[Subsection 40(3)]

Subsection 40(2) does not apply to personal information collected for law enforcement purposes.

## Disposal of Records

[Subsection 40(4)]

A regulation concerning the disposal of personal information has been issued (O. Reg. 15/89).

The regulation establishes certain requirements which must be followed by institutions when disposing of personal information. These requirements can be summarized as follows:

- Transfer to the Archives of Ontario or destruction:

An institution may dispose of personal information only by (1) transferring it to the Archives of Ontario or (2) by destroying it in such a manner that the information cannot be reconstructed or retrieved.

Records from ministries and certain agencies are transferred to the Archives of Ontario for permanent retention if the Archivist determines that the records have long-term, historical value. Where these records contain personal information, the Head disposes of the personal information by transferring it to the custody of the Archives of Ontario.

Where the personal information does not have archival value, or where the personal information is in the custody or control of an institution which does not transfer records to the Archives of Ontario, the personal information is disposed of by destruction. Transferring personal information to an internal archives other than the Archives of Ontario is not a "disposal" for the purposes of the regulation.

Personal information that is disposed of by destruction should be destroyed in such a way that it cannot be reconstructed or retrieved. Paper and other hard copy records, for instance, should be burned, pulped, or shredded rather than discarded or disposed of as garbage.

Personal information on magnetic media such as tape or disk should be disposed of by mag-

netic erasure or by destruction of the medium, when the medium is released from the processing environment. Where the medium is retained and re-used within a secure processing environment, however, personal information may be disposed of by writing-over during re-use.

- Authorization of Head:

Where personal information is in the custody or under the control of an institution, no person shall destroy it without the authorization of the head. The Head may delegate this responsibility.

The authorization may apply to specific data or to general classes or categories of records, and must be consistent with any retention or other management requirement which may apply to the record of personal information through legislation or policy.

- Protecting security and confidentiality:

The Head shall ensure that all reasonable steps are taken to protect the security and confidentiality of personal information that is to be disposed of, including protecting its security and confidentiality during its storage, transportation, handling and destruction or transfer to the Archives of Ontario. In determining whether all reasonable steps are taken, the Head shall consider the nature of the personal information to be disposed of.

- Measures which may be considered include:

- ensuring that personal information not be left unattended or outside of secure areas during interim storage;
- ensuring that storage rooms are locked and secure, with the distribution of keys or lock combinations carefully controlled;
- ensuring that access to the information during temporary storage is limited to authorized personnel and that such access is documented;
- labelling record storage containers in such a manner that the nature of the contents is not revealed;
- requiring outside suppliers of transportation and disposal services to be bonded, with security provision included in the service contract.



The nature of these measures should be consistent with the sensitivity of the personal information involved. In all cases, however, the minimum requirement is that the confidentiality of the personal information be maintained during disposal.

- **Record of disposal:**

Each institution shall maintain a disposal record setting out what personal information has been destroyed or transferred to the Archives of Ontario and the date of that destruction or transfer. This disposal record must not contain personal information.

The record of disposal would describe the "class" of record involved (e.g., "Licence Application Forms", "ABC Program Closed Case Files") rather than containing information about an identifiable individual, and would include the date or date range of the records, and the date of the disposal. Institutions may also wish to record the authority for the disposal and the means of the disposal.

Where the disposal is undertaken by an outside supplier of disposal services, the institution may require the supplier to provide a "certification of destruction" signed by an officer of the company. This certificate would then be linked to the disposal record maintained by the institution.

## Use of Personal Information

[Section 41]

This section outlines the general rules for the use of personal information in the custody or control of an institution. It recognizes that the individual's right to privacy includes the right to know how his/her personal information is being used. See Figure V, page 5-12.

Personal information may be used by an institution having custody or control of the record where one of the three circumstances enumerated in subsections 41(a) through (c) exists.

### Individual Consent

[Subsection 41(a)]

The individual to whom the information relates may identify the personal information and consent to its use.

The consent should be writing and indicate:

- the particular personal information to be used;
- the use for which consent is given;
- the date of the consent; and
- the institution to which consent is given.

### Purpose for Which Information Obtained

[Subsection 41(b)]

The institution may use personal information where the use is for the purpose for which the information was obtained or compiled, or for a consistent purpose.

When personal information is collected, subsection 39(2) requires that the individual to whom the information relates be informed of the principal purpose or purposes for which the personal information is intended to be used. As well, section 45 requires that a Directory of Records be published listing the principal and other uses of personal information.

For an explanation of a "consistent purpose", see the discussion of section 43.

### For the Purpose Disclosed

[Section 41(c)]

Where a receiving institution has information disclosed to it by another institution under section 42 or by a municipality or local board under section 32 of the Municipal Freedom of Information and Protection of Privacy Act, the information may be used by the receiving institution only for the purpose for which it was disclosed.

*For example:*

If personal information is disclosed to an institution in compassionate circumstances, such as to assist in locating a family member (subsection 42(i)), that information is only to be used to locate the family member and for no other purpose.

## Disclosure of Personal Information

[Section 42]

Section 42 sets out the rules for disclosure of personal information other than to the individual to whom the information relates. This section provides that an institution shall not disclose

personal information in its custody or under its control, except in the specific circumstances enumerated in subsections 42(a) through (r).

Disclosure of personal information under this section is not dependent upon a request under the Act. Section 42 concerns privacy protection in the day to day activities of institutions. On the other hand, section 21 is an exemption protecting personal privacy where a request for access has been made.

### **Disclosure in Accordance with Part II** [Subsection 42(a)]

Subsection 42(a) recognizes that personal information may be disclosed in accordance with Part II of the Act and would be initiated by a request for access to information by an individual other than the individual to whom the information relates.

### **Consent to Disclosure** [Subsection 42(b)]

Personal information may be disclosed where the individual to whom the information relates identifies the information in particular and consents to its disclosure.

The consent should be in writing and indicate:

- the particular personal information to be disclosed;
- to whom the information may be disclosed;
- the date of the consent; and
- the institution to which the consent is given.

### **Consistent Purpose** [Subsection 42(c)]

Personal information may be disclosed for the purpose for which it was obtained or compiled, or for a consistent purpose.

*For example:*

An institution may disclose personal information of employees or clients to a collection agency or assist the collection agency in recovering monies owed to the institution. Such disclosures would reasonably be expected by persons who have not discharged their debts to the institution.

Educational institutions may also disclose personal information to federal and provincial funding agencies confirming successful completion of academic programs for the purpose of auditing student grants and loans. Students who receive financial assistance from government agencies could reasonably expect that such disclosures would take place.

For an explanation of a "consistent purpose", see the discussion of section 43.

### **In Performance of Duties** [Subsection 42(d)]

Personal information may be disclosed to an employee or officer of the institution who needs the record in the performance of his/her duties, and where disclosure is necessary and proper in the discharge of the institution's functions.

The test for permitting access by officers and employees of an institution to personal information is twofold:

- the employees or officers must need the record to perform their duties. "Duties" may include submitting employee payroll information, thus requiring access to an employee's personnel record; and
- disclosure must be necessary and proper in discharging the institution's functions. An "institution's functions" would include the administration of statutes, regulations and programs, as well as activities necessary to the overall operation of the institution.

This subsection applies only to the disclosure of personal information to an employee or officer of the institution which has custody of the information. Disclosure from one institution to another cannot be made under this subsection.

### **Act of Parliament or the Legislature** [Subsection 42(e)]

Disclosure may be for the purpose of complying with an Act of the Legislature or of Parliament, or a treaty, agreement or arrangement thereunder. The treaty, agreement or arrangement must result from or be sanctioned by a federal or Ontario statute or regulation.

*For example:*

The Ontario Election Act requires the public posting of voters' lists.

The Canada Assistance Plan Act, a federal statute, requires disclosure of information by the provincial government for audit purposes.

**Disclosure to a Law Enforcement Agency**

[Subsection 42(f)]

Disclosure is permitted by a law enforcement institution to a law enforcement agency in Canada, or to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority.

Disclosure may be made only by a "law enforcement institution". An institution engaged in "law enforcement" is discussed in the *Definitions* section in Chapter 1.

*For example:*

The Ministry of the Solicitor General is an institution which is engaged in law enforcement through the Ontario Provincial Police and other programs. The Ministry of Correctional Services is also an institution engaged in law enforcement because it is responsible for the enforcement of probation and parole orders. The Ministry of Community and Social Services and the Ministry of Consumer and Commercial Relations are also institutions engaged in law enforcement through the parts of these institutions responsible for enforcement of and compliance with statutes.

Disclosure may be made only to a law enforcement agency. A "law enforcement agency" includes a national, state, or local police force, or a municipal police force in Canada, or the RCMP.

In exchanges of personal information with foreign countries, written agreements or treaties should be established. Where this is not possible or practical, an arrangement may be made. An "arrangement" is an unwritten agreement for the exchange of personal information.

When a law enforcement institution discloses personal information to police forces or other law

enforcement agencies in Canada, it is not required that an agreement or arrangement be in place.

**Aid in Law Enforcement**

[Subsection 42(g)]

An institution may disclose personal information to another institution or law enforcement agency in Canada to aid an investigation leading or likely to lead to a law enforcement proceeding.

Although this subsection permits an institution to disclose personal information, an institution may choose to require a search warrant before access to personal information is granted by an institution.

**Compelling Circumstances**

[Subsection 42(h)]

Personal information may be disclosed in compelling circumstances affecting the health or safety of some individual.

In "compelling circumstances", either there is no other way to obtain the personal information, or there is an emergency situation where the delay in obtaining the information would be injurious to someone's health or safety.

This subsection is similar to subsection 21(1)(b).

Where personal information is disclosed under this subsection, notification of the disclosure must be mailed to the last known address of the individual to whom the information relates. This means the most recent address known to the institution which disclosed the personal information. If no address is known, the institution should attempt to obtain it from the person who made the request for the information.

**Compassionate Circumstance**

[Subsection 42(1)]

Disclosure is permitted in compassionate circumstances to facilitate contact with the next-of-kin, or a friend of an individual who is injured, ill or deceased.

"Compassionate circumstances" are those where there is a need to make contact with a friend or next-of-kin to inform them of an individual's injury, illness, or death. The personal infor-



mation to be disclosed may relate either to the injured or deceased person, or to the relative or friend who is to be contacted.

This subsection does not permit the disclosure of personal information in other than compassionate circumstances, for example, where a person is seeking information about a deceased person in order to collect an inheritance.

Only the personal information necessary to facilitate the contact should be disclosed.

### **To a Member of the Legislature**

[Subsection 42(j)]

Disclosure is permitted to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an enquiry on his/her behalf. Where the constituent is incapacitated, the member may be authorized by the next-of-kin or legal representative of the constituent.

This subsection applies to situations in which the assistance of a member of the Legislative Assembly is sought in resolving a problem, and the individual or his/her representative has consented to the disclosure of personal information to the member in the course of his/her enquiry.

Whether the member is making a written or oral inquiry, the member must indicate that he/she is acting with the constituent's authority. This disclosure will be recorded in or linked to the individual's record. Where the personal information requested is particularly sensitive (e.g., medical records), the institution may have additional consent requirements specific to the situation, such as written authorization.

### **To a Member of the Bargaining Agent**

[Subsection 42(k)]

Disclosure is permitted to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf. Where the employee is incapacitated, the bargaining agent may be authorized by the next-of-kin or legal representative of the employee.

As in subsection 42(j), reasonable steps should be taken to ensure the authority exists.

### **Responsible Minister**

[Subsection 42(n)]

Personal information may be disclosed to the Responsible Minister as authorized under the provisions of this Act.

*For example:*

A request for waiver of notification (under subsection 39(2) may require the disclosure of personal information to the Responsible Minister.

### **Information and Privacy Commissioner**

[Subsection 42(o)]

Personal information may be disclosed to the Information and Privacy Commissioner as authorized under the provisions of this Act. Under subsection 52(4), the Commissioner has the authority to examine any record in the custody or under the control of an institution during the course of an inquiry.

### **Government of Canada**

[Subsection 42(p)]

Disclosure is permitted to the Government of Canada in order to facilitate the auditing of shared cost programs.

### **Consistent Purpose**

[Section 43]

Section 43 provides that when personal information is collected directly from the individual to whom it relates, the purpose of its use/disclosure is a consistent purpose only if the individual might reasonably have expected such a use/disclosure.

Subsection 41(b) permits the use of personal information for the purpose for which it was obtained or for a consistent purpose.

Subsection 42(c) permits the disclosure of personal information without the individual's consent, if disclosure is for the purpose for which it was obtained or compiled, or for a consistent purpose.

A "consistent purpose" must be compatible with the purpose stated to the individual at the time the information was collected. The individual



could therefore reasonably expect this use/disclosure of his/her personal information.

For example:

An employee of an institution could reasonably expect that personal information collected at the time of hiring might be used to assess eligibility for another position.

Where personal information is collected other than directly from the individual in accordance with section 39, the question of whether use/disclosure is for a consistent purpose is not determined by considering the individual's reasonable expectation. It is determined by considering whether the institution's proposed use/disclosure of information is reasonably compatible with the purpose for which it was collected.

## **New Use/Disclosure of Personal Information**

[Subsections 46(1) and (2)]

The Directory of Records contains a statement of the uses/disclosures of the personal information in each bank listed. A use/disclosure of the personal information which is allowed by the Act, but is beyond those listed in the Directory, may occur. In such situations, the Head of the institution is required to record the new use/disclosure and attach that record to the personal information. This attachment becomes a component of the personal information and must appear when the information is accessed. The record of use/disclosure must specify what information was used/disclosed, for what purpose and by whom.

The method used to link the record of use/disclosure to the personal information will depend on the method used to store the information. In the case of paper files, the record of use would be filed with or inserted into the content of the individual's personal information. In the case of computerized or microfiche record retrieval, flagging the record is an example of a method of establishing the link.

See Figure V, page 5-12.

## **Notice of Use/Disclosure and Updating Directory**

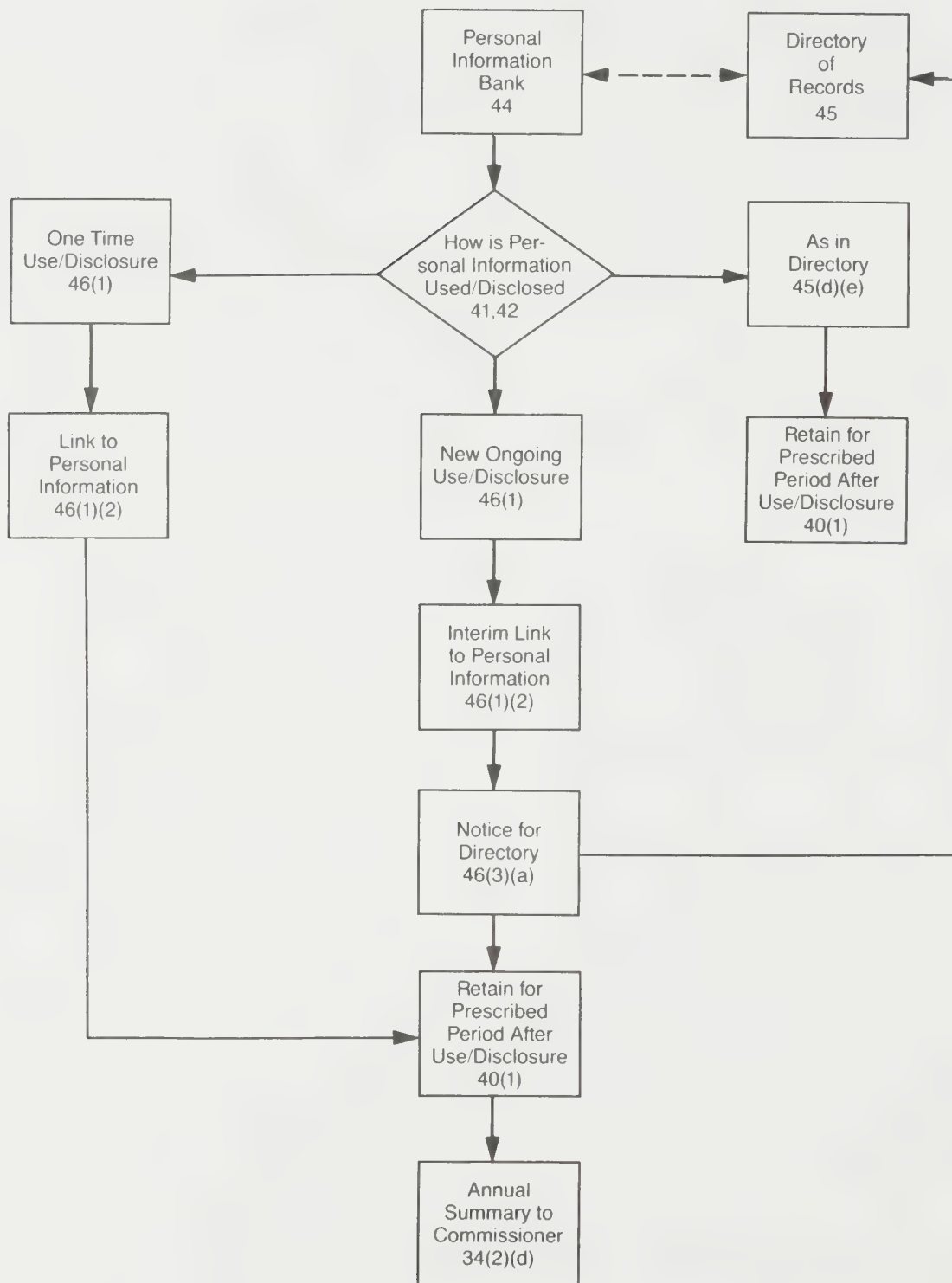
[Subsection 46(3)]

When personal information is regularly used/disclosed for a purpose not listed in the Directory, the Head of the institution must immediately inform the Responsible Minister and have the new use/disclosure included in the next edition of the Directory of Records. The new use/disclosure must be consistent with the purpose for which the information was compiled or obtained, as allowed under sections 41 and 42 of the Act. Until the new use/disclosure appears in the description of the particular bank in the Directory of Records, a record of the new use/disclosure must be attached to each individual's record whenever it is used or disclosed. In addition, the number of these use/disclosures is included in the annual report to the Commissioner as required by section 34.

See Figure V, page 5-12.

A copy of the form for reporting a new use/disclosure is contained in Appendix VI. Information on the procedure is available from the Freedom of Information and Privacy Branch, Management Board Secretariat.

Figure V  
Personal Information Use/Disclosure









# Commissioner and Appeals



# Commissioner and Appeals

## Introduction

Subsection 1(a)(iii) provides that one of the purposes of the Freedom of Information and Protection of Privacy Act is to provide a right of access to information in accordance with the principle that "decisions on the disclosure of government information should be reviewed independently of government". The appeal provisions of the Act provide that decisions of the head of an institution relating to access to records can be appealed to the Information and Privacy Commissioner who, as an officer of the Legislature, is independent of government.

This chapter will outline a number of administrative matters respecting the Information and Privacy Commissioner and the role of the Commissioner. The process of appeal to the Commissioner under the Act will also be discussed.

## Information and Privacy Commissioner

### Administrative Matters

Sections 4 through 9, in Part I of the Act, concern administrative matters respecting the Information and Privacy Commissioner including the nature and term of appointment, salary, benefits, staff and leasing of premises.

The Commissioner is appointed by the Lieutenant Governor in Council on the address of the Assembly (i.e., the Legislature) (subsection 4(2)). This underlines the independence of the Commissioner who is an officer of the Legislature and who reports to that body, not to any member of Cabinet (subsection 4(1)).

The Commissioner is appointed for a term of five years and may be reappointed for a further term or terms. He/she is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly (subsection 4(3)).

The Information and Privacy Commissioner appoints one or two officers of his or her staff to be Assistant Commissioners. In addition, the Commissioner may employ mediators and other officers and employees (subsection 8(1)).

### Role of the Commissioner

The Information and Privacy Commissioner hears appeals of decisions made by the Head of an institution (subsection 50(1)). The Commissioner can authorize mediation and conducts an inquiry when a person requests a review of a Head's decision (sections 51 and 52). The Commissioner's decision is by order disposing of the issues raised by an appeal (subsection 54(1)). Information provided to the Commissioner or anyone acting on his/her behalf may not be disclosed (subsection 55(1)).

The Commissioner is required to provide to the Speaker of the Assembly an annual report concerning the effectiveness of the Act in providing access to information and protection of personal privacy (section 58).

The Commissioner has certain powers relating to the protection of personal privacy (section 59).

The Commissioner may conduct public education programs concerning the Act as well as the Commissioner's role and may engage in research on matters affecting the carrying out of the purposes of the Act (section 59).

## Appeals

### Decisions That Can Be Appealed

In general, any decision that a Head makes under the Act may be appealed to the Commissioner (section 50). In particular the following decisions are subject to appeal:

- refusal to grant access to a record on the ground that the record is exempt;
- refusal to grant access to a record on the ground that the record does not exist;
- granting access to only part of a record;
- granting a request for access to a record that

may contain information referred to in section 17 (third party information) or that contains personal information where disclosure may be an unjustified invasion where disclosure may be an unjustified invasion of personal privacy for the purposes of subsection 21(1)(f);

- refusal under subsection 14(3) to confirm or deny the existence of a record to which subsections 14(1) and (2) (law enforcement) apply;
- refusal under subsection 21(5) to confirm or deny the existence of a record where disclosure would be an unjustified invasion of personal privacy under subsection 21(1)(f);
- a decision under section 27 to extend the time limit for responding to a request;
- a refusal to make a correction to personal information requested under subsection 47(2)(a);
- the amount of a fee charged under section 57;
- refusal to waive a fee charged under section 57;
- refusal to allow the requester to examine the original record under section 30 or 48.

Subsection 50(4) provides that the Ombudsman Act does not apply in respect of a complaint for which an appeal is provided under this Act. This means that a requester cannot seek the assistance of the Ombudsman in respect of any decision of a head under the Act but must proceed by way of an appeal to the Information and Privacy Commissioner.

### **Persons Who Can Appeal**

The following are specifically mentioned in section 50 as persons who can appeal:

- a person who has made a request for access to a record under subsection 24(1);
- a person who has made a request for access to his/her own personal information under subsection 48(1);
- a person who has requested correction of his/her personal information under subsection 47(2);

- a third party who has received notice under subsection 28(1) that the head intends to disclose a record that may affect the interests of the third party.

### **Notice Of Appeal**

An appeal is initiated by filing with the Commissioner written notice of appeal (subsection 50(2)).

Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution whose decision is under appeal. The Commissioner must also notify any other person who, in the Commissioner's opinion, is "affected" by the appeal (subsection 50(3)).

### **Time Limit**

An appeal is to be made within 30 calendar days after the notice is given of the decision appealed (subsection 50(2)).

### **Mediation and Inquiry**

The Commissioner may authorize a mediator under section 51 to investigate the dispute and try to bring about a settlement. Institution staff must cooperate fully in settlement efforts.

*For example:*

A settlement might take the form of an agreement that the requester be given access to certain records or parts of records but not to others, with no formal determination of whether the records or parts are exempt.

Settlement agreements relating to other matters, such as fees, may also be reached.

Where no settlement is reached, the Commissioner is to conduct an inquiry (subsection 52(1)). The inquiry may be conducted in private (subsection 52(3)).

In the course of an inquiry, the Commissioner has the right to call for, and examine, any record in the custody or under the control of an institution, despite Parts II and III of the Act or any other Act or privilege (subsection 52(4)).

The Head of an institution may require that the examination of a record be of the original record



and be conducted at the premises of the institution where the record is located (subsection 52(6)). This power of the Head might be invoked where, for example, a record is fragile or unique.

During the conduct of an inquiry, the Commissioner has the right to enter and inspect the premises of an institution (subsection 52(4)).

Before entering, the Commissioner must notify the Head of his/her intention (subsection 52(7)).

The Commissioner cannot delegate to anyone other than the Assistant Information Commissioner or the Assistant Privacy Commissioner the power to require a record referred to in section 12 (Cabinet records) and section 14 (law enforcement) to be produced and examined (subsection 56(2)).

The Commissioner may summon and examine on oath any person (including any officer or employee of an institution) who may have relevant information (subsection 52(8)). No statement made may be used in any other proceeding, except a prosecution for perjury (subsection 52(10)).

No person can be prosecuted for giving evidence in compliance with the Commissioner's requirement (subsection 52(12)). This means that an employee of an institution who gives evidence in compliance with a requirement of the Commissioner cannot be prosecuted for contravening a statutory confidentiality provision.

The person who filed the appeal, the Head of the institution and any affected party who has been notified of the appeal by the Commissioner have the right to make representations. No person is entitled to be present during, to have access to, or to comment on representations made to the Commissioner by any other person (subsection 52(13)). In rare cases, the Commissioner can order the exchange of representations to ensure procedural fairness. Any order to exchange representations would stop short of disclosing the records at issue (Order #164). There is no right in any party to an appeal to cross-examine another party (subsection 52(2)). A party to an appeal may be represented by a lawyer or by an agent (subsection 52(14)).

Where the issue in an appeal is refusal to grant access to a record, or part of a record, the burden of proof lies upon the head of the institution who must prove that the record, or the part, falls

within the exemption specified in the notice given (section 53). Where a third party seeks to rely on an exemption before the Commissioner, that party also bears an onus of proving that the exemption relied upon applies to the portion of the record in issue (Order #3).

It is an offence under the Act to wilfully obstruct the Commissioner in the performance of his/her duties under the Act (subsection 61(1)(d)). It is also an offence to wilfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his/her functions (subsection 61(1)(e)).

### **Commissioner's Power To Make An Order**

After considering all the evidence at an inquiry, the Commissioner can make an order disposing of the issues raised by an appeal (subsection 54(1)). Examples of orders that the Commissioner might make include:

- an order that a record or part of a record be disclosed;
- an order that a record not be disclosed where disclosure would adversely affect a third party;
- an order that a correction be made to personal information;
- an order that a fee be reduced or waived;
- an order that the time for responding to a request for access not be extended.

All orders of the Commissioner are binding and must be complied with by the institution. It is an offence under the Act to wilfully fail to comply with an order of the Commissioner (subsection 61(1)(f)).

Where an appeal relates to a denial of access to a record on the ground that the record is exempt from disclosure, the Commissioner can determine whether in fact and in law the exemption applies. Where the exemption claimed is found not to apply, the Commissioner may order that the record be disclosed.

An order may contain any terms and conditions the Commissioner considers appropriate (subsection 54(3)). The Commissioner does not have the statutory power to order an institution to reply to questions in the absence of a record, nor does the Commissioner have the authority to

order an institution to create a record (Order # 99).

Subsection 54(2) provides that where the Commissioner upholds a decision of a Head that the head may refuse to disclose a record, or part of a record, the Commissioner shall not order the Head to disclose the record or part of it. This means that in the case of discretionary exemptions, the Commissioner cannot exercise the discretion in place of the Head of the institution and order disclosure. However, the Commissioner may order the head to consider the exercise of discretion, where the Head has not done so. The Commissioner may also order a Head to reconsider the exercise of discretion where, for example, the Head has not considered the particular circumstances of the request (Order # 135).

*For example:*

Where there is an appeal of a refusal to grant access to a record because its disclosure would reveal advice or recommendations of a public servant and is therefore exempt under subsection 13(1), the Commissioner would consider the scope of the exemption in respect to the disputed record and whether any of the exceptions in subsection 13(2) apply. If the Commissioner finds that the record is not exempt from disclosure, he/she could order disclosure. If, however, the Commissioner upholds the Head's decision that the Head may refuse to disclose because the record is exempt under subsection 13(1), then the Commissioner cannot order the Head to exercise his/her discretion in favour of the requester.

However, in relation to certain exemption provisions, such as section 13, the Commissioner can find that, under section 23, the exemption does not apply because there is a compelling public interest in the disclosure of the record that clearly outweighs the purpose of the exemption.

*For example:*

If the Commissioner agrees with the Head that a record is exempt under subsection 13(1), the Commissioner could order disclosure where he/she finds there is a compelling public interest that clearly outweighs the purpose of section 13.

The exercise of discretion in relation to a discretionary exemption is a separate issue from the determination of whether there is a compelling public interest under section 23.

In an appeal, when a party seeks disclosure of a record in the public interest under section 23, the party seeking disclosure must bear the burden of establishing that section 23 applies (Order #47).

### **Notice of Order**

The Commissioner gives the appellant and the person who received notice of the appeal under subsection 50(3) written notice of the order (subsection 54(4)).

### **Judicial Review**

There is no right of appeal in the Act from a decision of the Commissioner to a court. In rare cases, a judicial review proceeding may be brought before the Supreme Court of Ontario where it is alleged that the Commissioner has made a serious procedural error, has acted on inadmissible evidence or has exceeded his/her jurisdiction.







Fees



## FEES

### Introduction

Under subsection 57(1), a head shall require a person who makes a request for access to a record to pay certain costs incurred by the institution in processing the request. It is the policy of the Ontario Government that institutions charge for these costs, except in unusual circumstances, or where fees have been waived under subsection 57(3). (Refer to Management Board Directive 8-1).

These costs include personnel and other costs for search, for preparation of a record, for computer and other processing and for shipping. These costs may be charged when no provision is made for a charge or a fee under any other Act (subsection 57(1)).

Individuals are not required to pay a fee for access to his/her own personal information (subsection 57(1)).

### Fees Regulation

A detailed schedule of fees is outlined in the regulations.

### Types of Costs

#### Time

##### Manual Search Charges

[Subsection 57(1)(a)]

There is a charge for every hour of manual search time in excess of two hours that is required to locate a record. This covers the personnel time involved in locating the record and the time to examine indexes, file plans or listings of records (whether on paper or computer) to find the record.

The charge prescribed by regulation is \$7.50 for each quarter hour or part of a quarter hour of search in excess of two hours.

##### Record Preparation Charges

[Subsection 57(1)(b)]

There is a charge for personnel time involved in preparing a record for disclosure. This would include personnel time involved in severing exempt information prior to disclosure. There is no charge, however, for personnel time involved in reviewing records to determine if an exemption applies (Order #4).

The charge prescribed by regulation is \$7.50 for each quarter hour or part of a quarter hour.

##### Computer and Other Costs

[Subsection 57(1)(c)]

Computer and other costs incurred in locating, retrieving, processing and copying a record may be charged to the requester. Examples of various costs incurred are listed in the following information.

- **Computer Program Development Charges**

It may be necessary, in some instances, to develop a computer program or some other method of producing a record from a machine readable record (see definition of "record" under *Definitions* and the discussion at page 3-6).

The charge prescribed by regulation is \$15.00 for each quarter hour or part of a quarter hour spent by any person in developing or testing a program. The charge under this subsection is restricted to a personnel charge and does not include computer processing time.

- **Reproducing a Record**

There is a charge for costs incurred by an institution to copy a record. The cost is determined by the type of reproduction used. For example; the cost of a photocopy is \$0.20 per copy.

\$0.20 per page is the maximum charge for copying under the Act. This also includes the cost of feeding the machine (Order #184).

- **Invoiced Costs**

An institution may require services to assist in locating, retrieving, processing or copying a record. For example, the Ministry of Government Services provides computer processing

services to ministries on a charge-back basis.

Where the institution receives an invoice for the cost of the services, the requester is in turn billed for those costs.

Before obtaining the services, the institution should ensure that the cost does not greatly exceed the amount that would be charged for that service under the regulation.

### • Shipping Costs

There can be a charge for any shipping costs incurred by an institution (subsection 57(1)(d)).

Since the charge is paid before access to the record is given, an estimate of the final cost for shipping will have to be made.

## Estimates and Deposits

[Subsection 57(2)]

Whenever the cost of processing a request is over \$25.00, the institution must provide the requester with an estimate (subsection 57(2)). The notice should provide the requester with as much detail as possible about the estimate (see page 3-5).

When the estimate is over \$25.00, the institution may collect a deposit. The deposit is 50% of the estimate. If the actual fee is waived, or is less than the deposit, the excess amount is refunded.

*For example:*

The fee estimate provided to the requester prior to processing the request is \$120.00. The deposit that may be required is \$60.00 (50% of the estimate). The actual fee is \$110.00. Before the record is released, the requester is billed for the balance of the fee which is \$50.00.

## Timing of Payment

A head may require the requester to pay the fee prior to granting access to the record (See regulations).

## Waiver of Payment

[Subsection 57(3)]

The Head of an institution shall waive (either in whole or in part) a fee required to be paid, after considering certain circumstances. It is the re-

sponsibility of the requester to request a fee waiver (Order #5), although a head may consider a waiver in the absence of such a request. The decision to waive or reduce a fee is made on a case-by-case basis and is based on grounds that it is fair and equitable in the circumstances. When a request is made for fees to be waived, the requester has the onus of proving that the criteria for a fee waiver described in subsection 57(3) apply.

The following circumstances enumerated in subsection 57(3)(a) through (e) of the Act should be considered by the head in deciding whether to waive fees:

- the extent to which the actual cost of processing, collecting and copying the record varies from the amount required to be paid under subsection 57(1). If the actual cost is considerably less than what is determined under subsection 57(1), consideration of a waiver of part of the payment may be appropriate. Where the cost exceeds the fee schedule in the regulation, however, only the amount allowed by the regulation is charged;
- whether the payment will cause a financial hardship for the requester. It is the responsibility of the requester to supply evidence of financial hardship;
- whether dissemination of the record will benefit public health or safety. The head should consider the extent to which dissemination of the record will benefit public health or safety. Where the record merely relates to public health or safety matters but does not affect public health or safety, a waiver is not justified (Order #2);
- any other matters prescribed in the regulations. The following are prescribed in the regulation as matters for a head to consider;
- whether the person requesting the record is granted access to it. Where a record has not been found, or is fully or partially exempt from disclosure, consideration may be given to a full or partial waiver of payment;
- where the amount is \$5.00 or less whether the amount is too small to justify requiring payment.

The list of considerations for waiver in subsections 57(3)(a) is exhaustive (Order #4).



## Fees and Access

### To a copy

[Section 30 and discussion at page 3-7]

Where access to an original is not reasonably practicable, the requester is entitled to receive a copy of the record, subject to fees allowable under the Act.

Under the regulations, where the Head cannot adequately provide for the security of an original record, the requester is entitled only to a copy of the record.

### To an Original at an Off-Site Location

A person may request access to an original record at a location other than where the record is normally kept.

Under the regulations, access to an original need only be provided on premises operated by the institutions. Access to an original on premises other than where the record is kept need not be provided when the original record is needed for active use by the institution or, when access would unreasonably interfere with the operations of the institution.

Where it is reasonably practicable to do so, and where the institution chooses not to send the original but makes a copy available instead, costs incurred in reproducing the record are not charged to the requester. Fees for other expenses listed in subsection 57(1), however, are appropriate. Having examined the record, the requester may select pages for copying. The requester is charged according to the schedule of fees.

The Head must take reasonable steps to verify the identity of the requester prior to providing access to his or her own personal information (see regulations).

## Disposition of Payment

[subsection 57(5)]

On the date of publication of this Manual, there were no regulations concerning the disposition of payments pursuant to section 57.

Fees collected by ministries and certain agencies (generally those within Schedule I of the Management Board Directive on Agencies, Boards and Commissions) must be deposited in the Consolidated Revenue Fund. Other agencies may retain fees collected.

Where a refund is required, it will be necessary to requisition a refund from the Consolidated Revenue Fund if the deposit or original fee payment was made to that fund.

## Review by Commissioner

[Subsection 57(4)]

Any person required to pay a fee may ask the Commissioner to review the decision:

- to charge a fee; or
- the amount of the fee.

Where the requester wants to appeal but wishes immediate access to the record, he/she must pay the fee and then appeal to the Commissioner. If the appeal is allowed and the fee reduced, the amount of the reduction is refunded to the requester.



## No.2 Notification to Requester

### ● Fee estimate

Date

Requester Name  
Address

Reference Number

Dear :

Further to your request for access to records under the Freedom of Information and Protection of Privacy Act, section 57 of the Act allows fees to be charged.

The estimated fee for the records requested is (enter amount). Details of the fee are: (explain cost estimate).

Our preliminary review of the records indicates that some of the following exemptions might apply to the records you have requested. (Describe in a general way what exemptions might apply to what kinds of records.)

The Act provides that all or part of the fee can be waived if in our opinion it is fair and equitable to do so, if the fee will cause you a financial hardship or if dissemination of the record will benefit public health or safety.

Your written acceptance of this fee estimate (*Option:* together with a deposit of (enter amount)) is requested prior to proceeding with the request.

*Option:* Cheque payable to

Please make your cheque or money order payable to the Treasurer of Ontario.

You may request that this fee estimate be reviewed by the Information and Privacy Commissioner (insert address). Please note that you have 30 days from the receipt of this letter to request a review of the fee estimate.

Sincerely,

Coordinator  
Freedom of Information and Privacy Coordinator





## N° 2 Avis à l'auteur de la demande

### • Estimation du droit à acquitter

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Par suite de votre demande d'accès à des documents en vertu de la Loi sur l'accès à l'information et la protection de la vie privée, nous vous informons que l'article 57 de la loi permet d'exiger des frais pour ce service.

Les frais estimatifs pour les documents demandés s'élèvent à (inscrire le montant). Voici le détail de cette estimation: (expliquer l'estimation des frais).

Un premier examen des documents indique que certaines des exceptions suivantes pourraient s'appliquer aux documents que vous avez demandés. (Décrire de façon générale les exceptions qui pourraient s'appliquer à certains genres de documents.)

La loi prévoit qu'on peut supprimer en totalité ou en partie les frais si, à notre avis, le montant exigé vous imposerait un fardeau financier ou si la diffusion du document aurait des effets favorables sur la santé et la sécurité publiques.

Avant de traiter votre demande, il nous faut votre acceptation écrite de l'estimation des frais (*Option*: ainsi qu'un dépôt de (inscrire le montant)).

*Option*: Chèque payable à l'ordre de

Veuillez faire votre chèque ou mandat-poste à l'ordre du trésorier de l'Ontario.

Vous pouvez demander que cette estimation des frais soit révisée par le commissaire à l'information et à la protection de la vie privée (insérer l'adresse). Vous avez 30 jours à partir de la réception de la présente lettre pour demander une révision de l'estimation des frais.

Bien cordialement,

Coordonnateur

Accès à l'information et protection de la vie privée









# Offences and Liability



## Offences and Liability

### Offences

[Section 61]

Section 61 outlines offences under the Freedom of Information and Protection of Privacy Act, the penalty for offences and when the consent of the Attorney General is required for prosecutions.

Subsections 61(1)(a), (b) and (c) create offences relating to breaches of provisions of the Act.

It is an offence to wilfully disclose personal information in contravention of the Act (subsection 61(1)(a)). This offence consists of intentionally and knowingly disclosing personal information in a manner that is not authorized by section 42 of the Act.

It is an offence to maintain a personal information bank that contravenes the Act (Subsection 61(1)(b)). The offence in this case is to intentionally maintain a secret personal information bank that is not described and made public as required by section 44. An employee of an institution who deliberately withholds information about the existence of a personal information bank with the intention that the bank's existence not be published runs the risk of being prosecuted under this subsection.

It is an offence to make a request for access to or correction of personal information under false pretences (subsection 61(1)(c)).

Subsections 61(1)(d), (e) and (f) create offences relating to the obstruction of the Information and Privacy Commissioner in the carrying out of his/her duties or exercising his/her powers.

It is an offence to wilfully obstruct the Commissioner in the performance of his/her duties (subsection 61(1)(d)). Subsection 61(1)(e) creates an offence of wilfully misleading the Commissioner. It is an offence to fail to comply with an order of the Commissioner (subsection 61(1)(f)).

A prosecution cannot be commenced under subsection 61(1)(d), (e) or (f) without the consent of the Attorney General (subsection 61(3)).

A person who is found guilty of an offence is liable to a fine not exceeding \$5,000 (subsection 61(2)).

### Liability

[Subsections 62(2), (3) and (4)]

Subsection 62(2) provides that no civil action can be brought against an employee of an institution for compensation for monetary damages resulting from the disclosure or non-disclosure of a record in good faith. Nor can an action for damages be brought against such an employee for failure to give a notice required under the Act if reasonable care has been taken to give the notice. A record should be kept of the steps taken to give notice.

However, subsections 62(3) and (4) preserve the liability of the institution – as opposed to the individual employee – to civil proceedings for damages.

The Commissioner has the power to order an institution to cease a collection practice and to destroy collections of personal information that contravene the Act. The Commissioner must hear the head before exercising this power (subsection 59(b)).





# Appendices



# Appendices

## Appendix I

### Acknowledgements and Sources

#### Acknowledgements

Many individuals worked long and diligently to make this Manual a practical, working guide to assist those involved in the administration of Ontario's Freedom of Information and Protection of Privacy Act.

The Manual's team of writers and editors included members of the Freedom of Information and Privacy Branch, Management Board Secretariat as well as the Coordinators in ministries and agencies responsible for freedom of information and privacy matters.

#### Sources

The following books and publications provide additional reference material:

*Public Government for Private People, The Report of the Commission on Freedom of Information and Individual Privacy/1980, Volumes I, II and III.*

This report is commonly referred to as the "Williams report" after the Commission's Chairman, Dr. Carlton Williams.

The report contains a discussion of the issues respecting freedom of information and privacy protection legislation. It is an invaluable source of background information. Ontario's Freedom of Information and Protection of Privacy Act is based on its recommendations.

A number of detailed research reports which were prepared for the Commission have also been published.

#### *A dictionary*

Almost all the words in the Act are used in their ordinary English sense, i.e., without any special legal meaning. A good dictionary will therefore be of great assistance in interpretation.

*Interim Policy Guide: Access to Information Act and the Privacy Act, published under the authority of the President of the Treasury Board, Minister of Supply and Services, 1983.*

This document is a guide to the federal Access to Information Act and the federal Privacy Act. While a number of the provisions in these statutes differ from provisions in Ontario's Freedom of Information and Protection of Privacy Act, the Treasury Board guide provides useful information of a general and a comparative nature.

*Freedom of Information and Protection of Privacy. Human Resources Guidelines, issued by Human Resources Secretariat.*

The guidelines consider the implications of the Freedom of Information and Protection of Privacy Act on human resources practices and processes.

#### *Hansard Official Report of Debates*

The debates of the Legislature and the Standing Committee on the Legislative Assembly provide useful background information.

The Act, as Bill 34, was considered by the Standing Committee on the Legislative Assembly (previously known as the Standing Committee on Procedural Affairs) between March 1986 and June 1987. The Bill was also debated on several occasions in the Legislature and was considered in Committee of the Whole on June 8 and 15, 1987. The Bill was considered further and received Third Reading on June 25, 1987.





## Appendix II

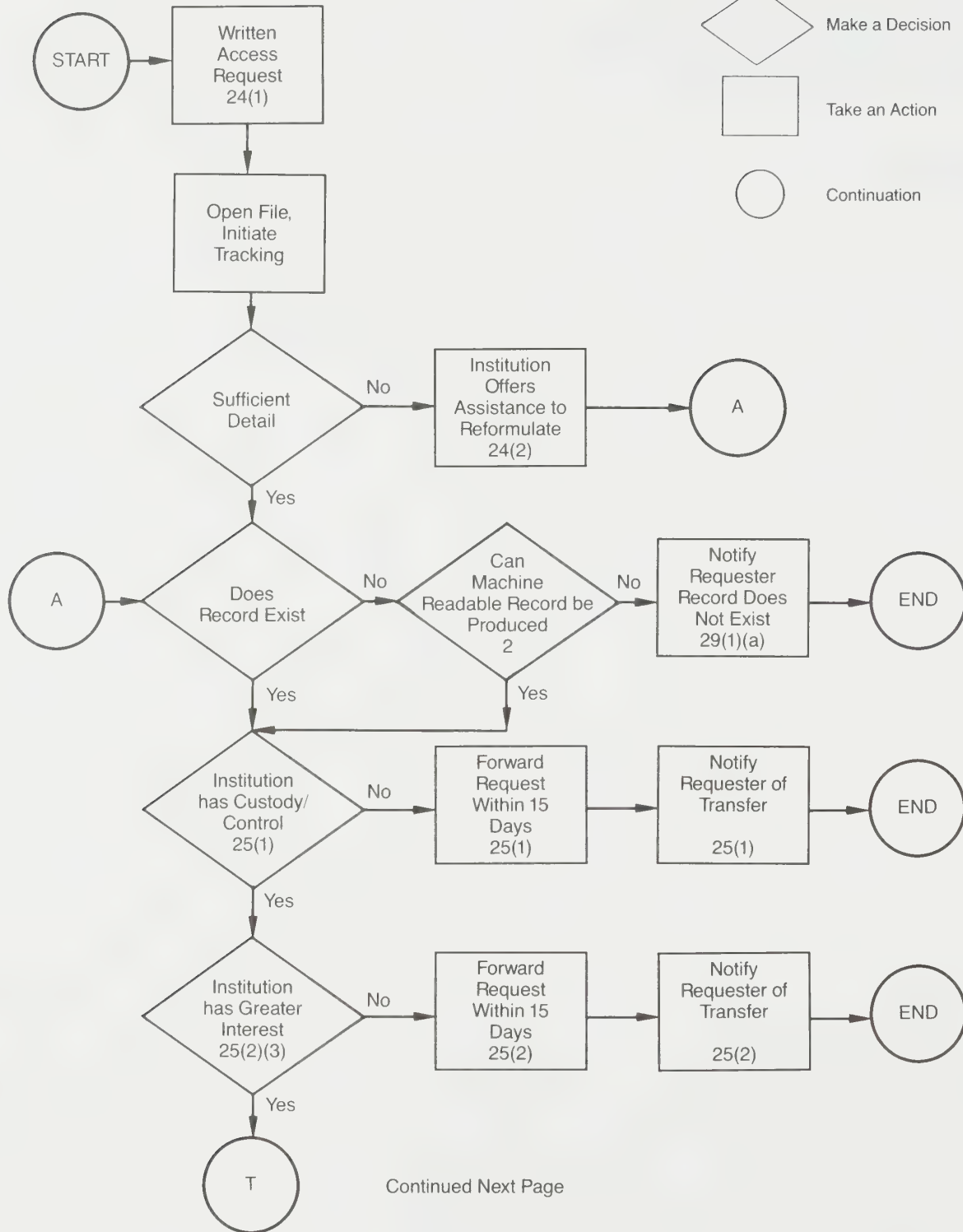
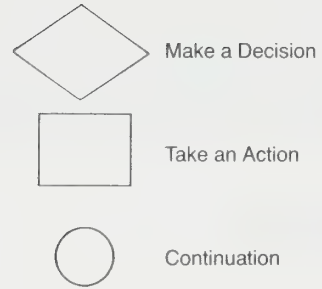
### Flowcharts

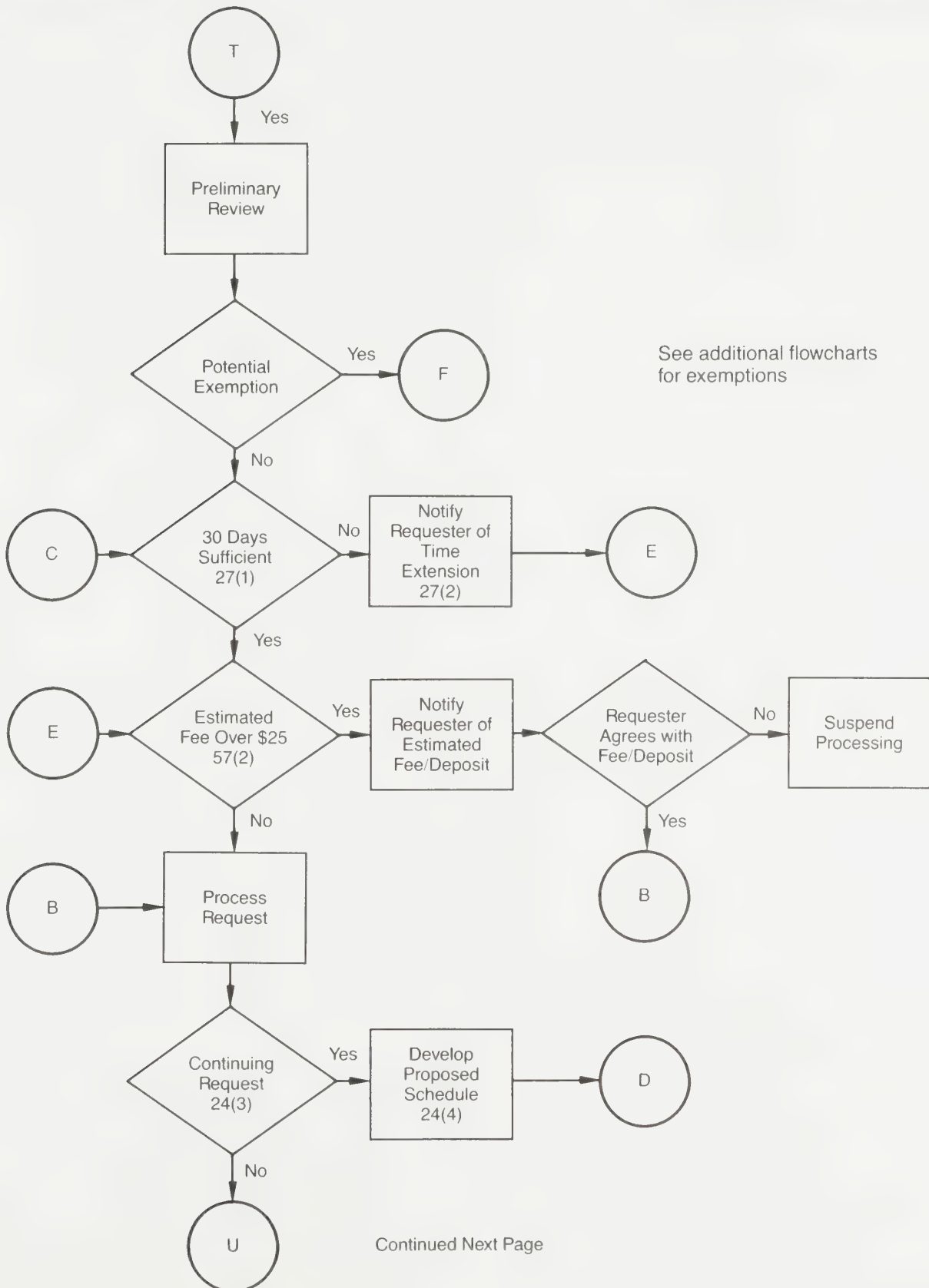
This Appendix contains the following flowcharts showing the steps which must be taken in processing a request for information under the Act:

1. Access Procedure (3 pages – a, b, c)
2. Cabinet Records
3. Advice to Government
4. Law Enforcement
5. Relations with Other Governments
6. Defence of Canada
7. Third Party Information (2 pages – a, b)
8. Economic and Other Interests of Ontario
9. Solicitor-Client Privilege
10. Danger to Safety or Health
11. Personal Privacy
12. Published Information
13. Additional Personal Information Exemptions

# Access Procedure

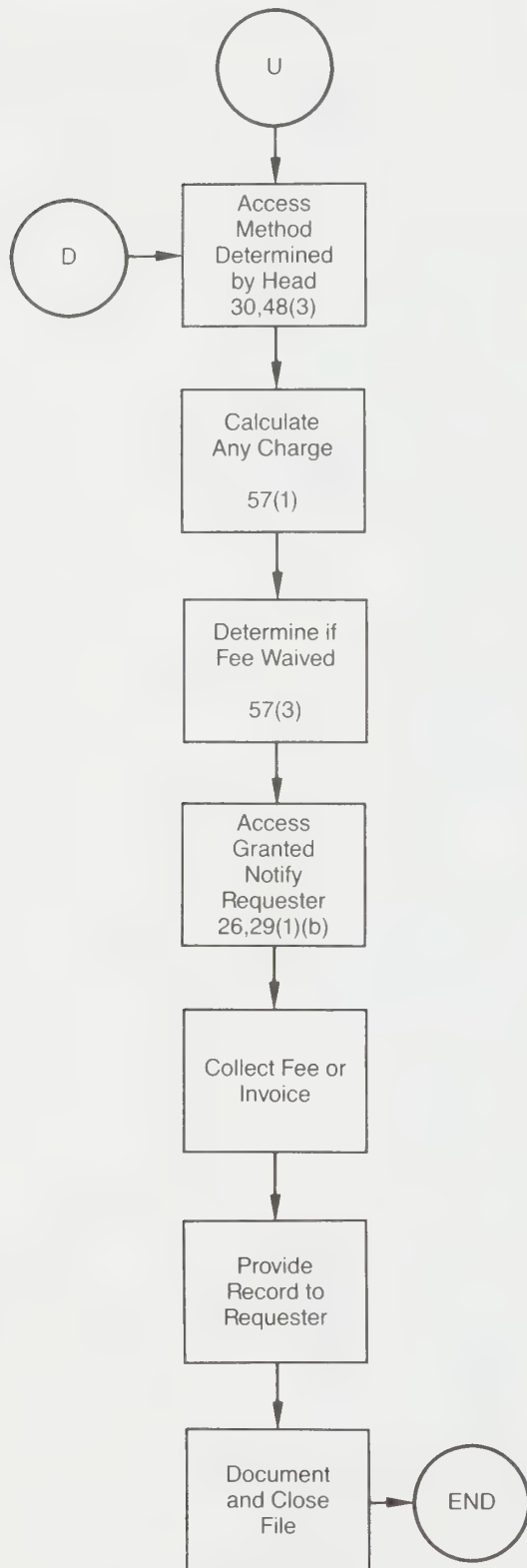
## LEGEND





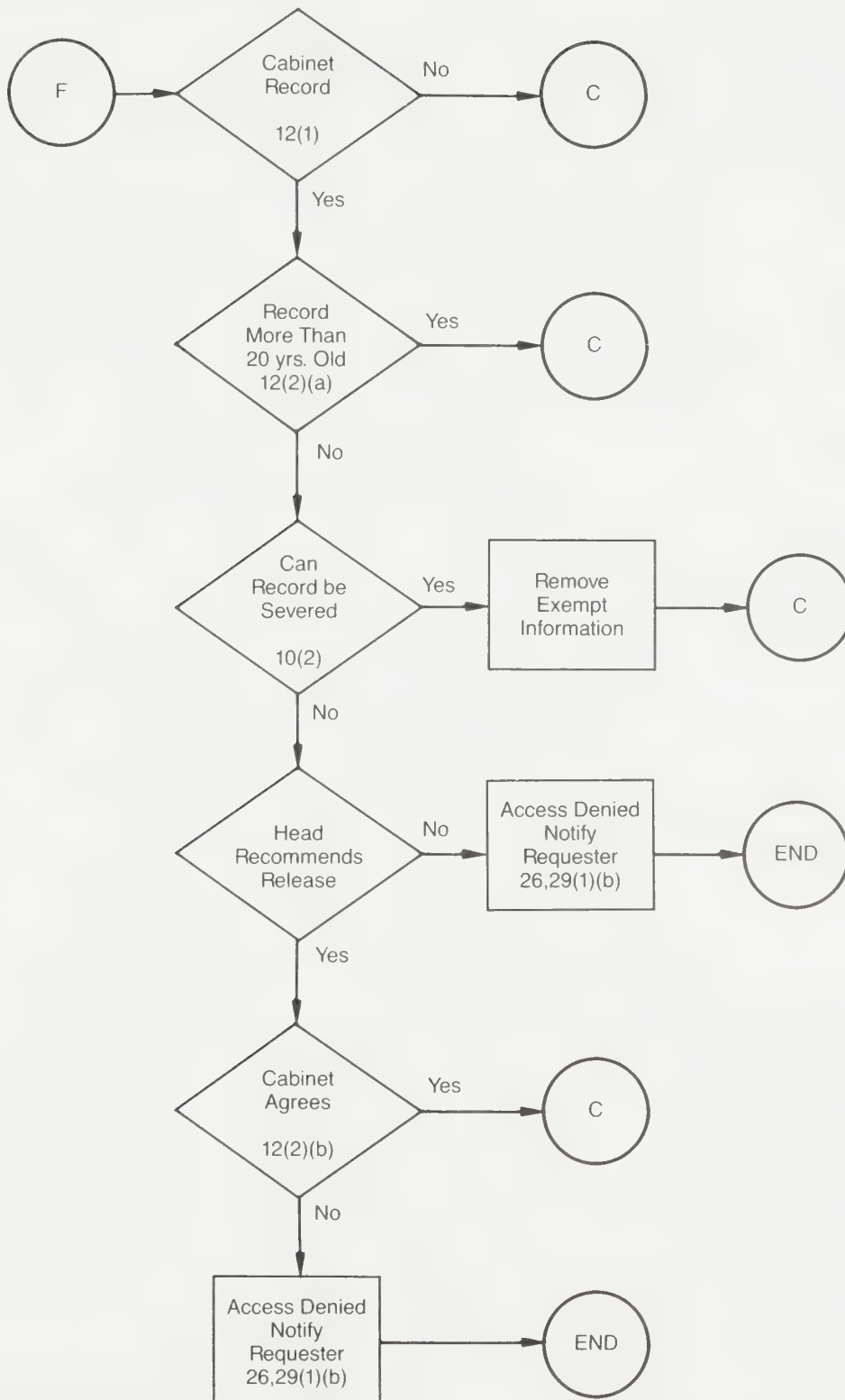
## Access Procedure

Continued From Previous Page

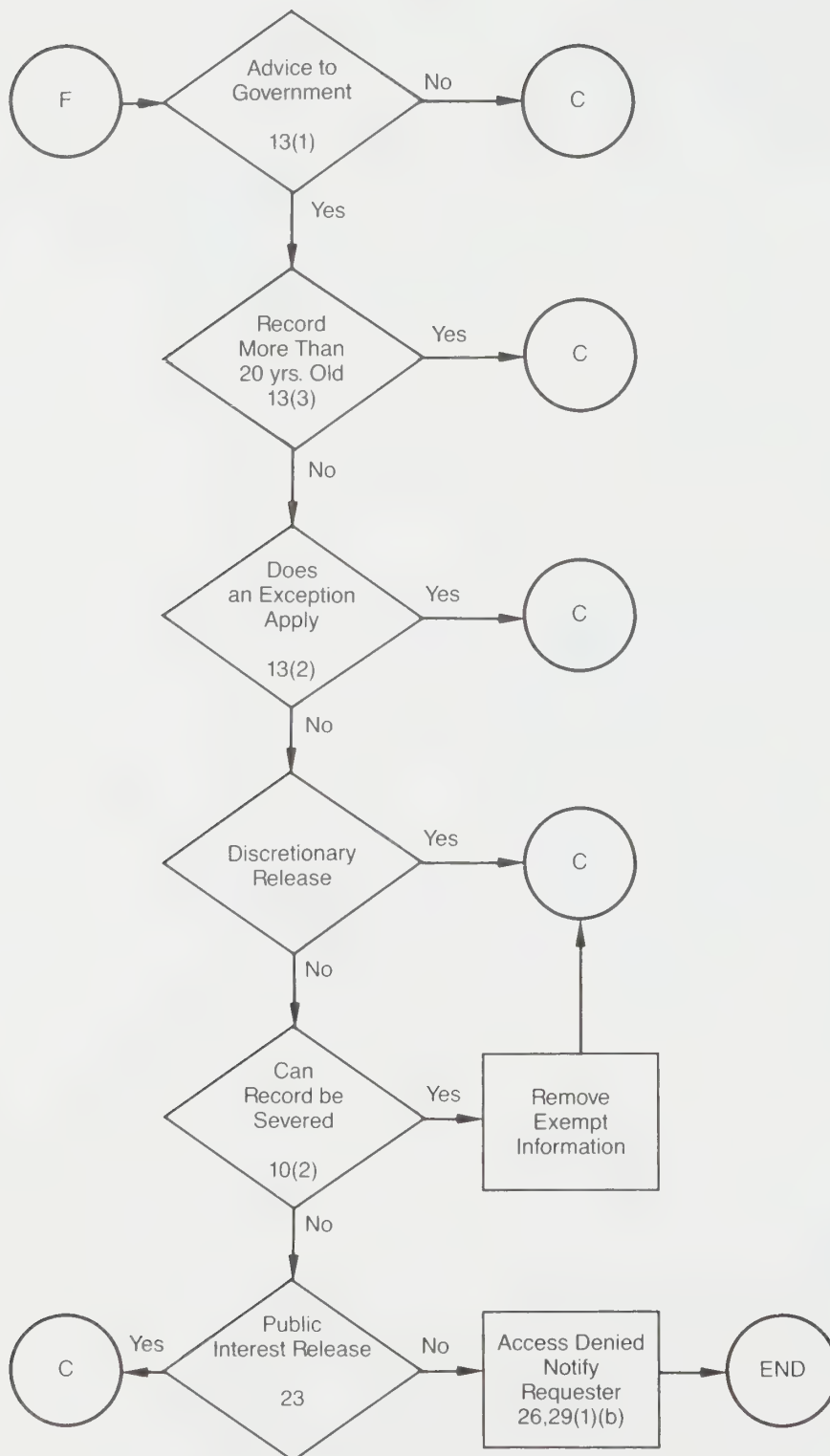




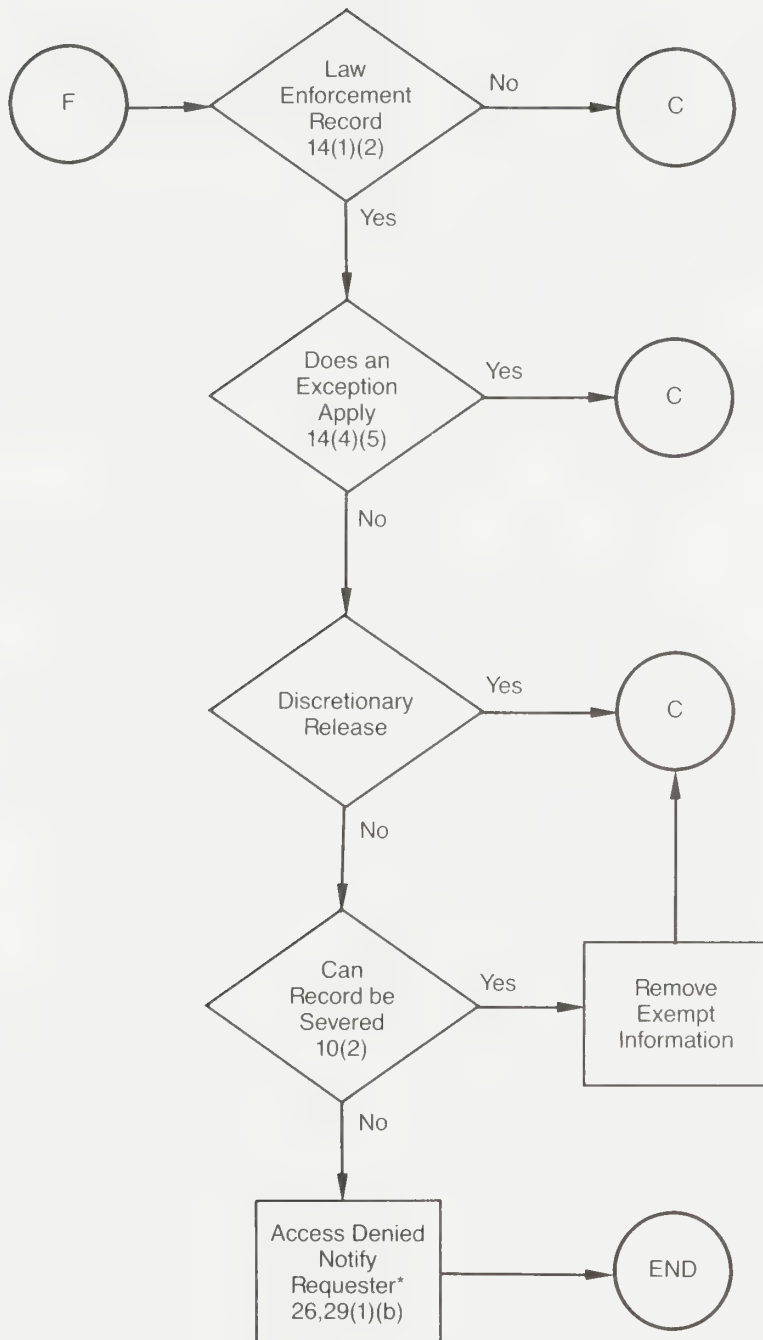
## Cabinet Records



## Advice to Government

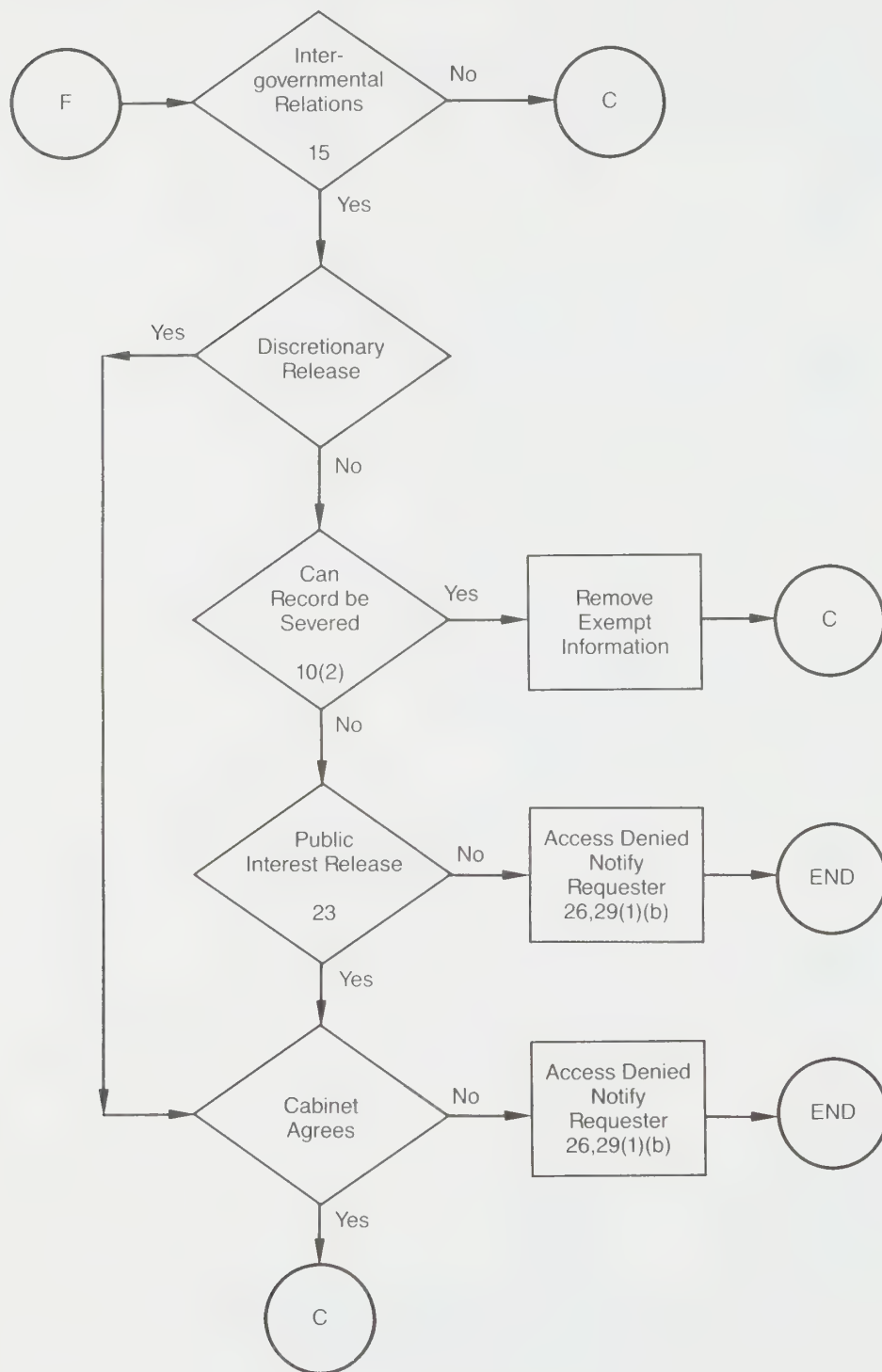


## Law Enforcement



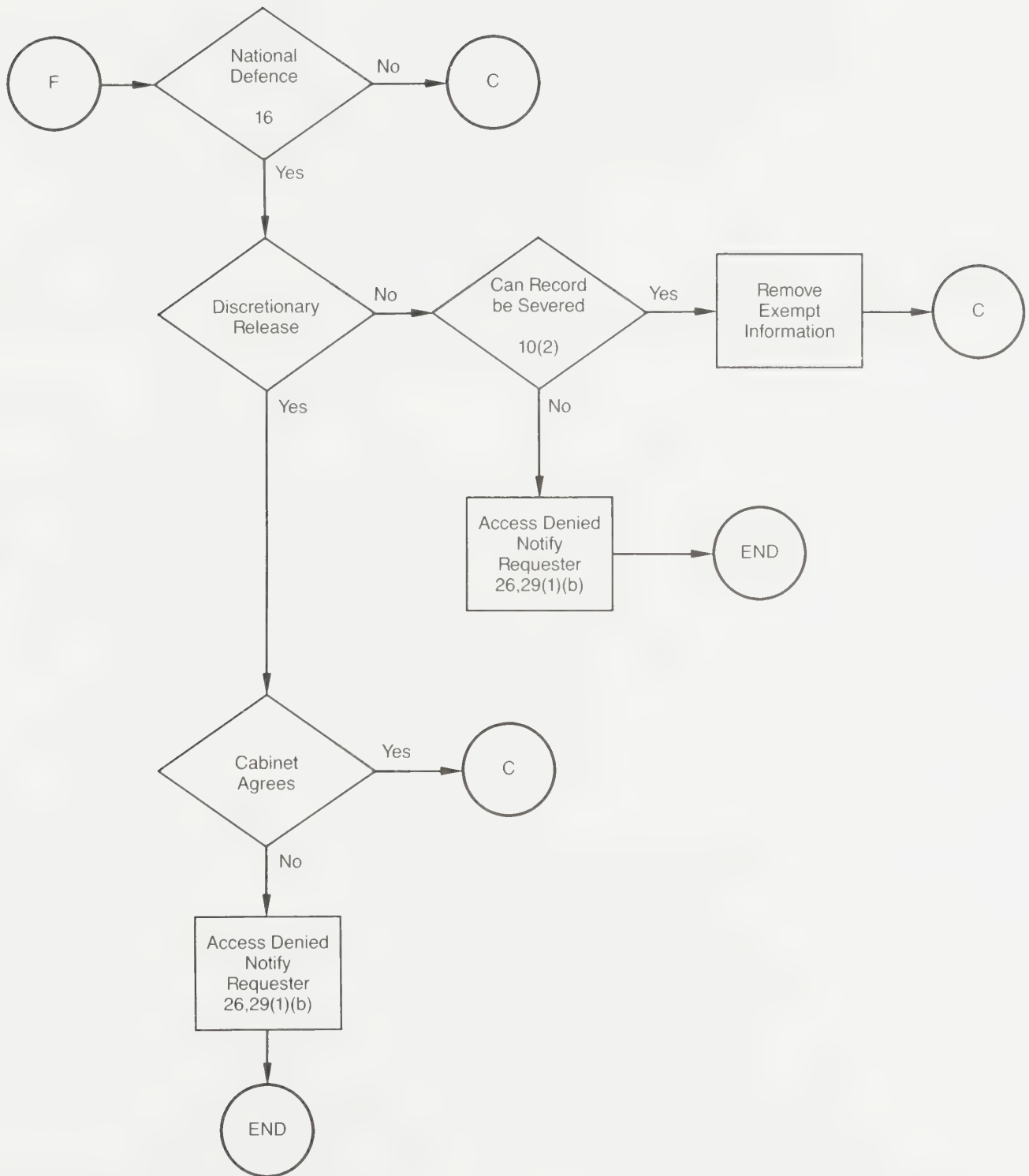
\*Note: Head may refuse to confirm or deny existence of record 14(3).

## Relations with Other Governments

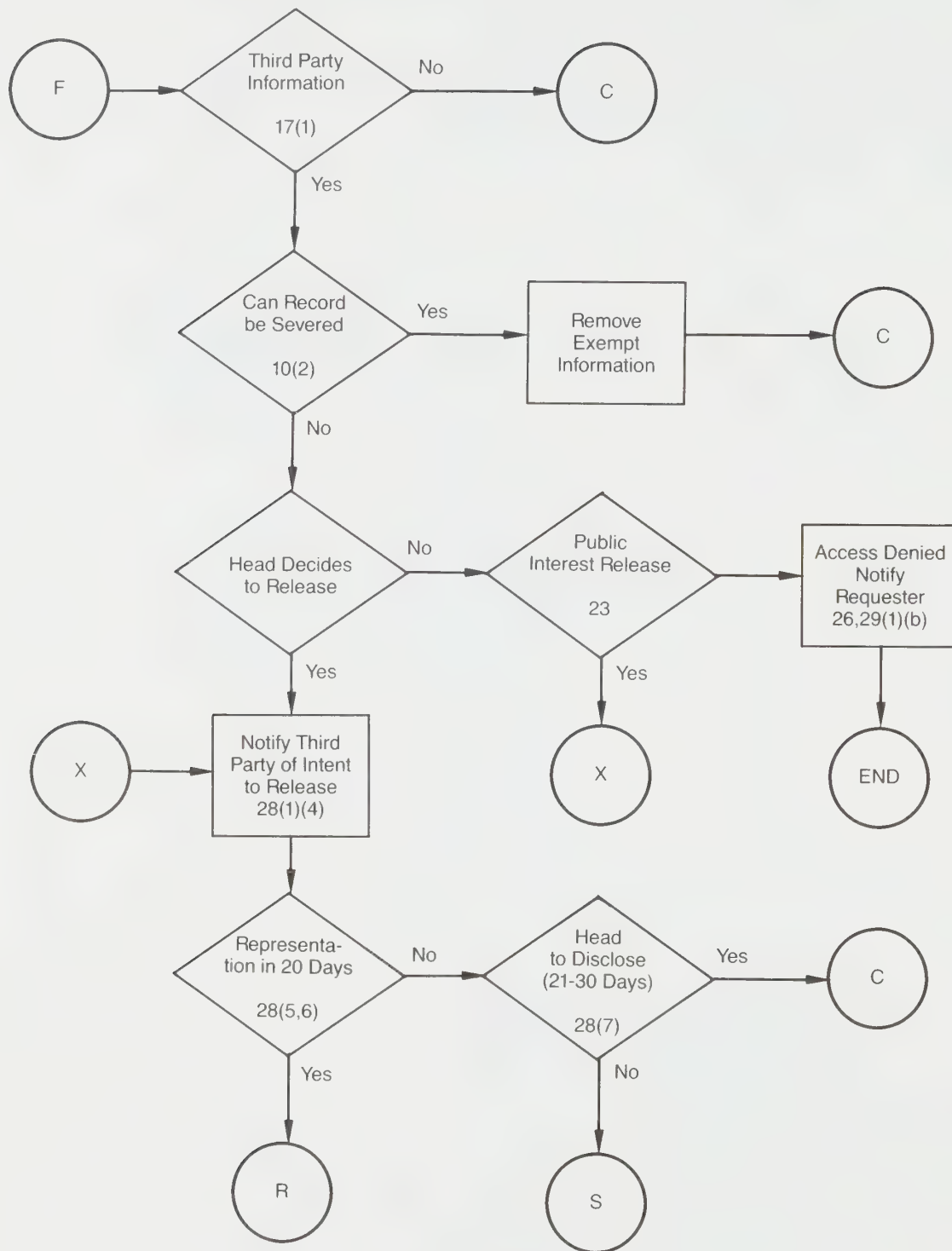




## Defence of Canada



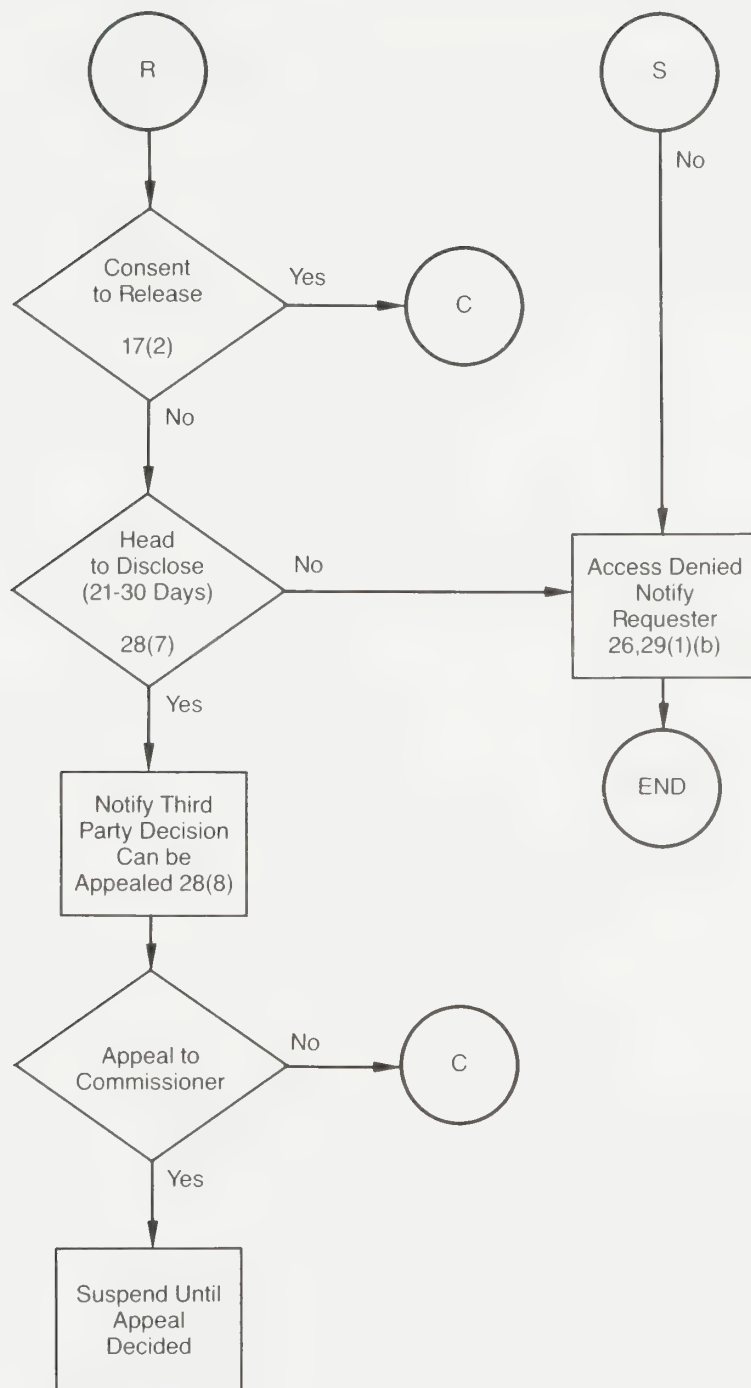
## Third Party Information



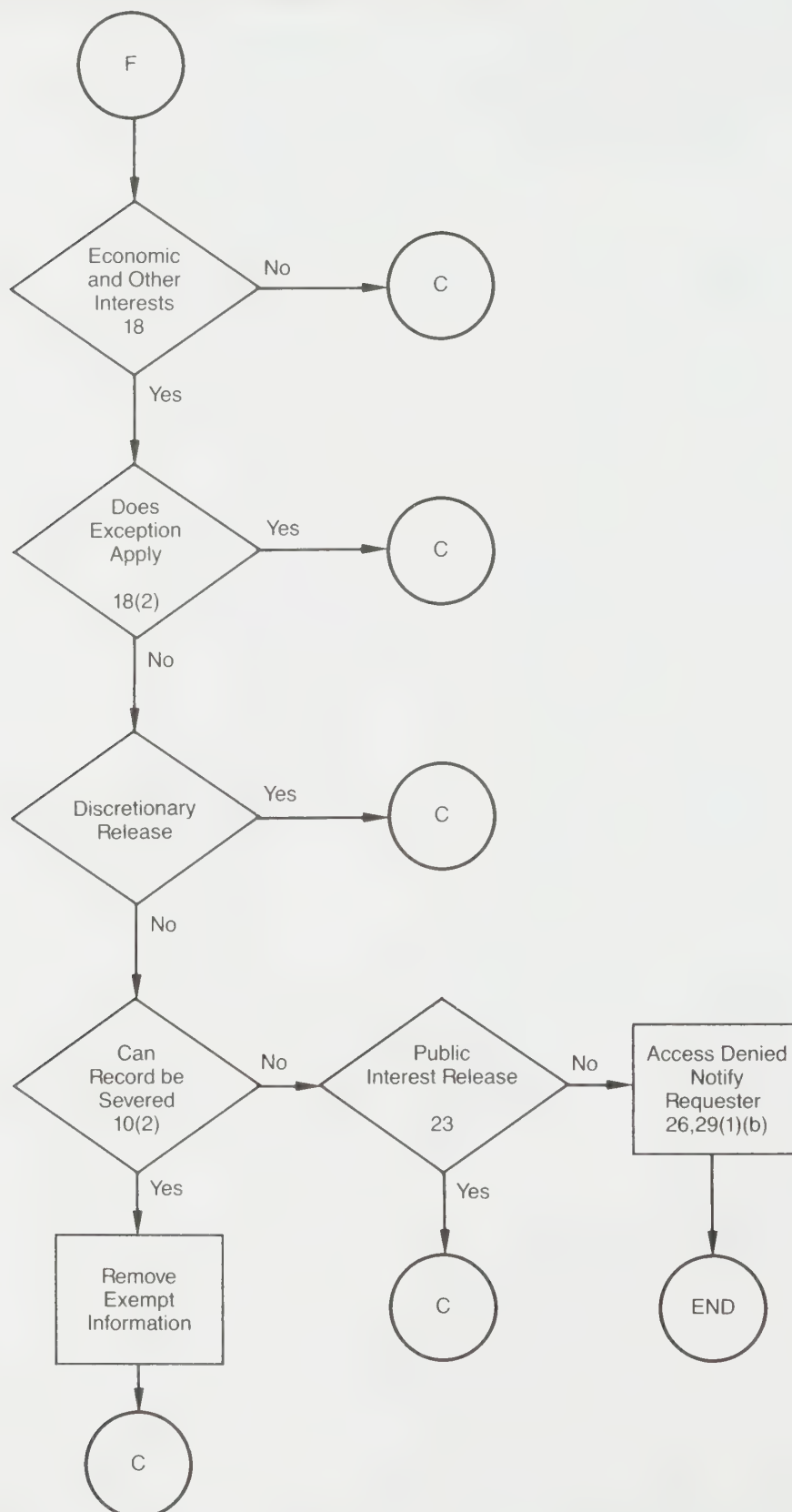
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## Third Party Information

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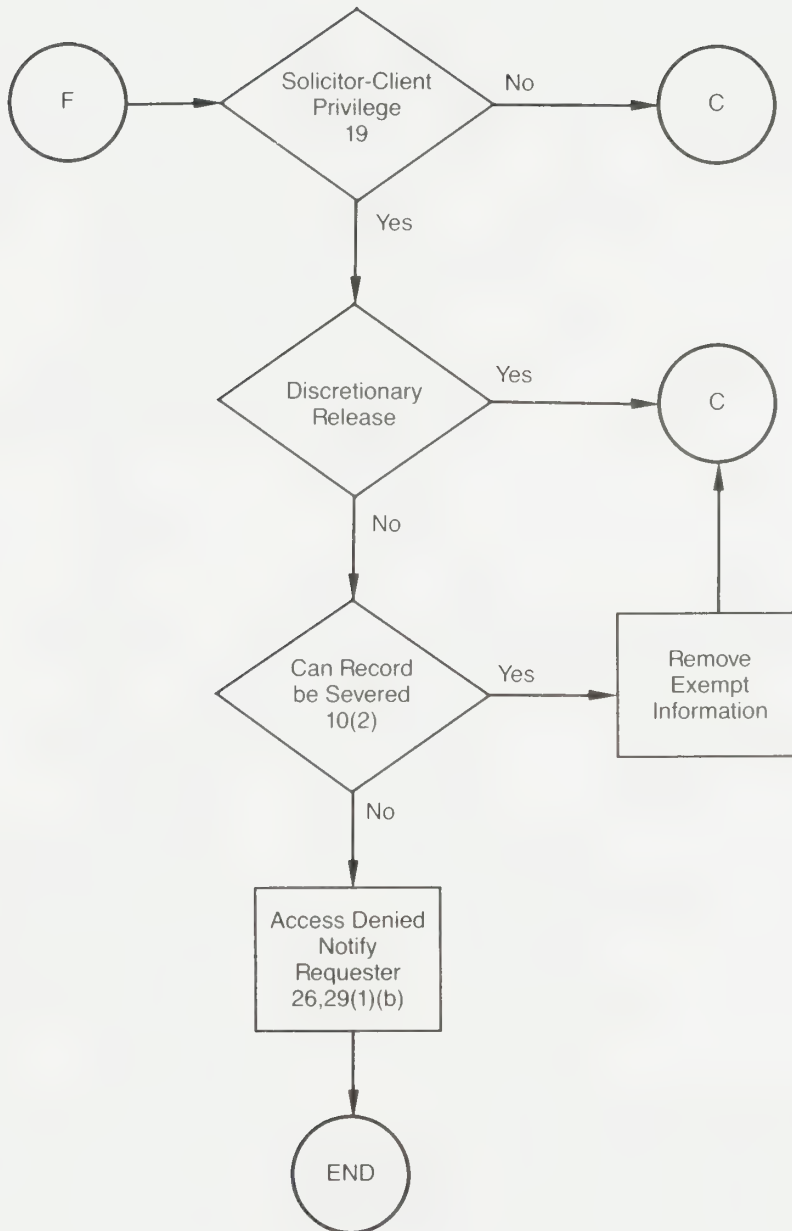


## Economic and Other Interests of Ontario

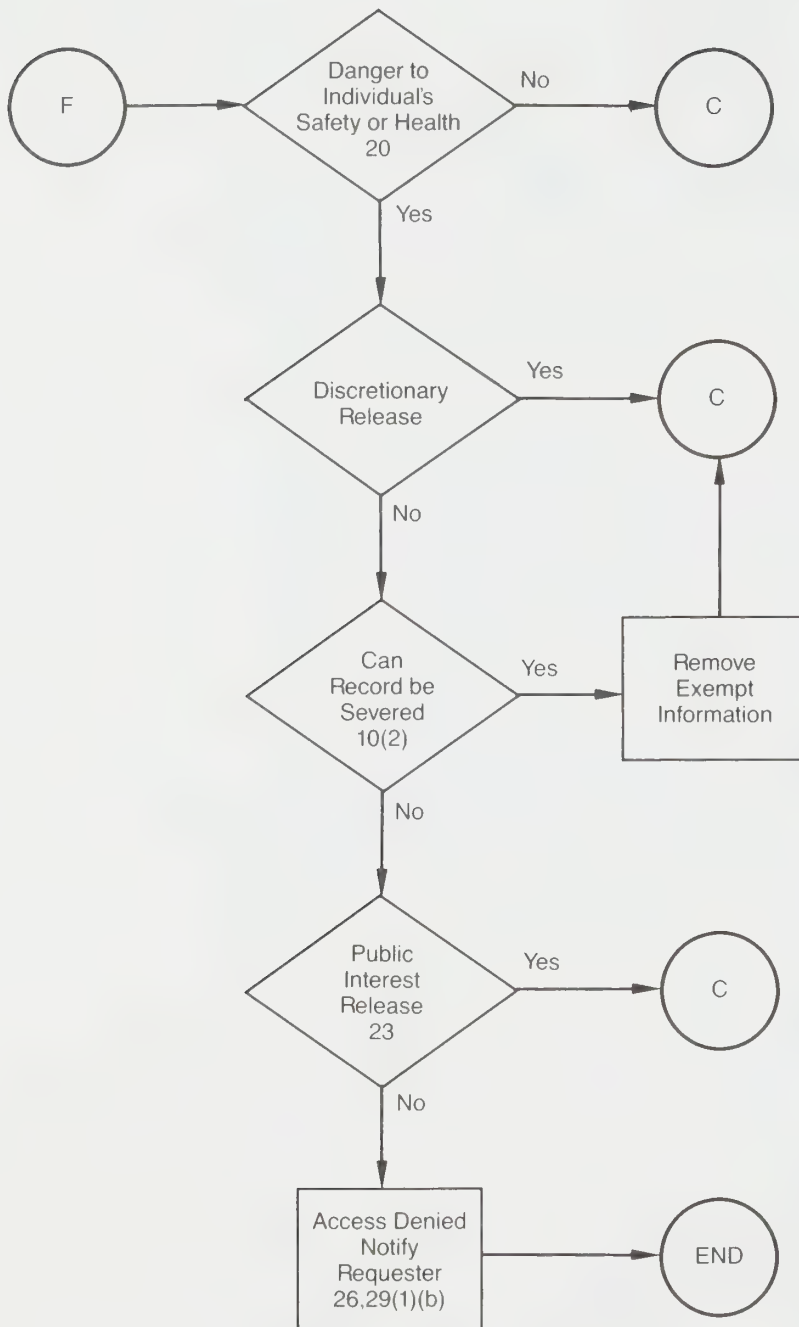




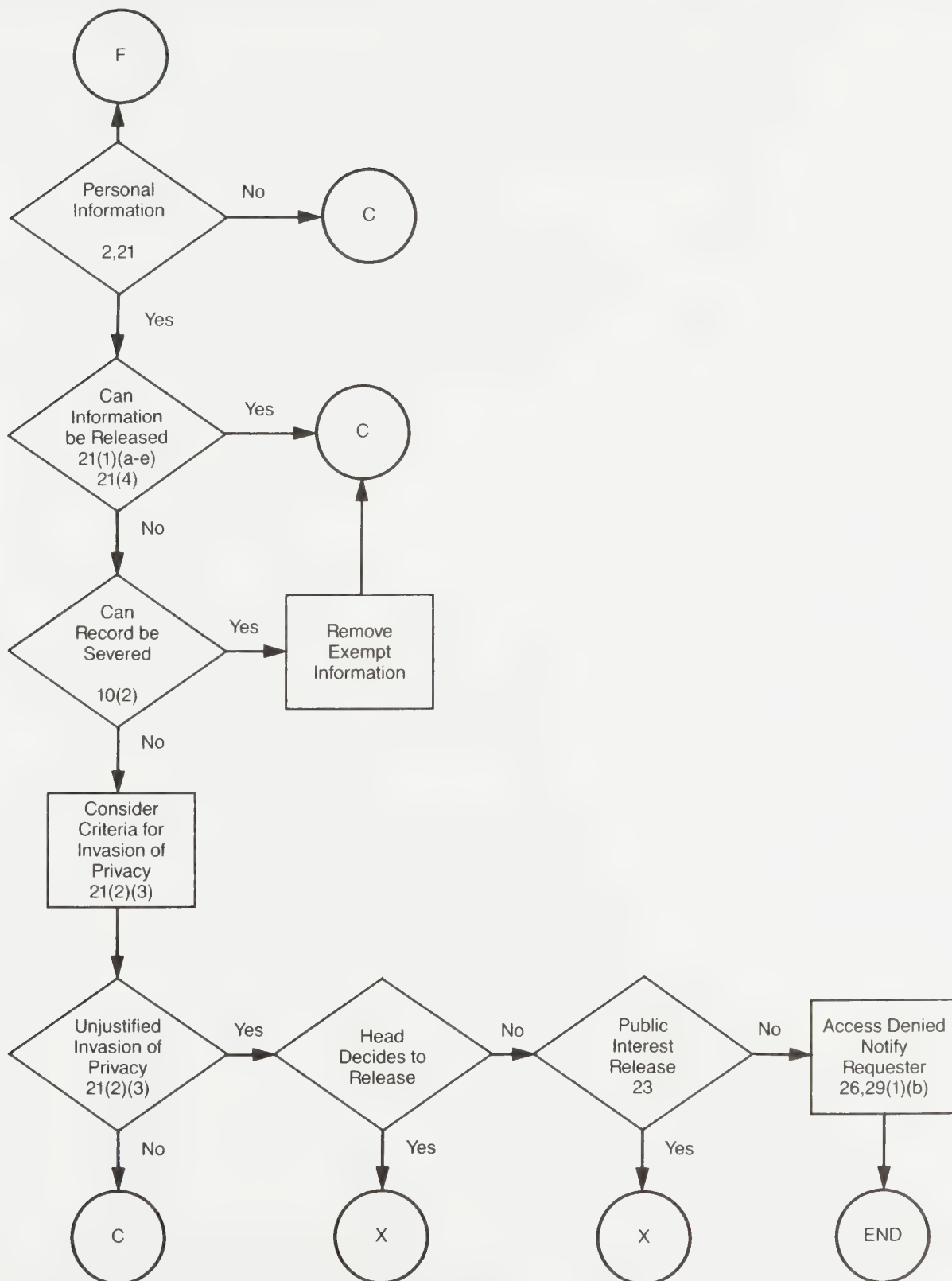
## Solicitor-Client Privilege



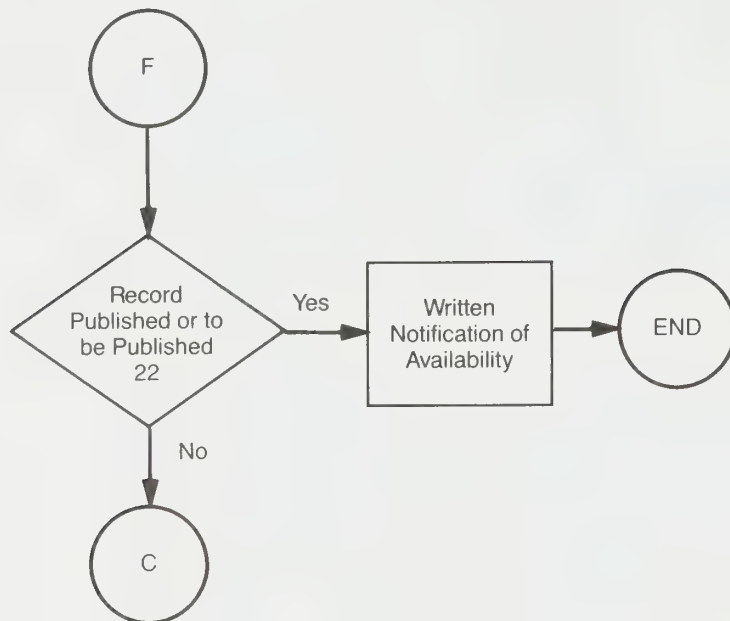
## Danger to Safety or Health



## Personal Privacy

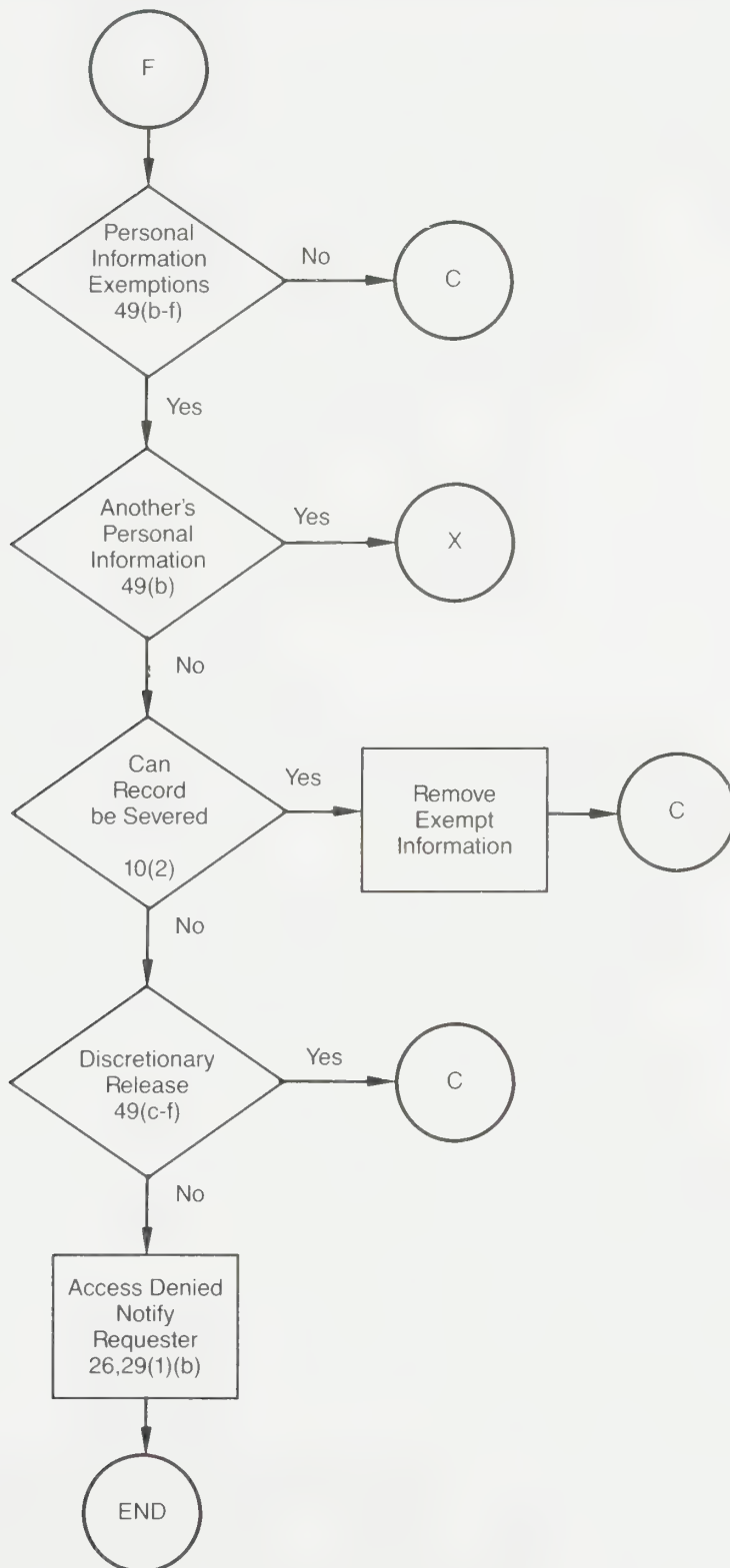


## Published Information





## Additional Personal Information Exemptions





## Appendix III

### Sample Notification Letters (English and French)

The following sample notification letters contained in this Appendix are for general guidance only and should be altered according to the circumstances in a particular case:

1. Notification to Requester
  - Further information required
  - Transfer of request
2. Notification to Requester
  - Fee estimate
3. Notification to Requester
  - Time extension
4. Notification to Requester
  - Grant Access
5. Notification to Requester
  - Record does not exist
  - Refusal to grant access (full or partial)
6. Notification to Requester
  - Access denied with no confirmation of existence
7. Notification to Third Party Affected by Disclosure
  - a) personal information
  - b) third party information
8. Notification to Requester
  - Third party affected
  - Time extension
9. Notification to Requester
  - After representations
  - Grant access
10. Notification to Third Party
  - After representations
  - Grant access
11. Notification to Requester
  - Denial of access to third party information
12. Notification to Third Party
  - Denial of access to requester after third party representations
13. Notification to Requester
  - Response to a correction request



## **No.1 Notification to Requester**

- **Further information required**
- **Transfer of request**

Date

Requester Name  
Address

Reference Number

Dear :

Your request for access was received on (date).

*Option:* Further information required.

Unfortunately, the request does not provide sufficient detail to identify the record. Would you please supply the following information: (insert details).

*Option:* Transfer of request.

Your request has been forwarded to (insert coordinator, address and institution). This action is taken under section 25 of the Freedom of Information and Protection of Privacy Act. That institution has (insert either "control or custody of the record or "a greater interest in the record").

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection



## N° 1 Avis à l'auteur de la demande

- Renseignements supplémentaires
- Demande transférée

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Votre demande d'accès à un document est parvenue le (date).

*Option:* Demande de renseignements supplémentaires

Votre description ne fournit pas suffisamment de renseignements pour identifier le document. Nous vous demandons de bien vouloir nous fournir les renseignements suivants: (préciser).

*Option:* Demande transférée

Votre demande a été transférée (nom et adresse de l'organisme, nom du coordonnateur) en application de l'article 25 de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée. Cet organisme a (insérer soit «la garde et le contrôle du document» ou «un intérêt prépondérant pour ce document»).

Veillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

## No.2 Notification to Requester

- Fee estimate

Date

Requester Name  
Address

Reference Number

Dear :

Further to your request for access to records under the Freedom of Information and Protection of Privacy Act, section 57 of the Act allows fees to be charged.

The estimated fee for the records requested is (enter amount). Details of the fee are: (explain cost estimate).

Our preliminary review of the records indicates that some of the following exemptions might apply to the records you have requested. (Describe in a general way what exemptions might apply to what kinds of records.)

The Act provides that all or part of the fee can be waived if in our opinion it is fair and equitable to do so, if the fee will cause you a financial hardship or if dissemination of the record will benefit public health or safety.

Your written acceptance of this fee estimate (*Option:* together with a deposit of (enter amount)) is requested prior to proceeding with the request.

*Option:* Cheque payable to

Please make your cheque or money order payable to the Treasurer of Ontario.

You may request that this fee estimate be reviewed by the Information and Privacy Commissioner (insert address). Please note that you have 30 days from the receipt of this letter to request a review of the fee estimate.

Sincerely,

Coordinator  
Freedom of Information and Privacy Coordinator

## N° 2 Avis à l'auteur de la demande

### ● Estimation du droit à acquitter

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Par suite de votre demande d'accès à des documents en vertu de la Loi sur l'accès à l'information et la protection de la vie privée, nous vous informons que l'article 57 de la loi permet d'exiger des frais pour ce service.

Les frais estimatifs pour les documents demandés s'élèvent à (inscrire le montant). Voici le détail de cette estimation: (expliquer l'estimation des frais).

Un premier examen des documents indique que certaines des exceptions suivantes pourraient s'appliquer aux documents que vous avez demandés. (Décrire de façon générale les exceptions qui pourraient s'appliquer à certains genres de documents.)

La loi prévoit qu'on peut supprimer en totalité ou en partie les frais si, à notre avis, le montant exigé vous imposerait un fardeau financier ou si la diffusion du document aurait des effets favorables sur la santé et la sécurité publiques.

Avant de traiter votre demande, il nous faut votre acceptation écrite de l'estimation des frais (*Option*: ainsi qu'un dépôt de (inscrire le montant)).

*Option*: Chèque payable à l'ordre de

Veuillez faire votre chèque ou mandat-poste à l'ordre du trésorier de l'Ontario.

Vous pouvez demander que cette estimation des frais soit révisée par le commissaire à l'information et à la protection de la vie privée (insérer l'adresse). Vous avez 30 jours à partir de la réception de la présente lettre pour demander une révision de l'estimation des frais.

Bien cordialement,

Coordonnateur

Accès à l'information et protection de la vie privée

### **No. 3 Notification to Requester**

- **Time extension**

Date

Requester Name

Address

Reference Number

Dear :

In reference to your access request received on (date), under the Freedom of Information and Protection of Privacy Act, the time limit for response is 30 days. We wish to advise you that the time has been extended in accordance with section 27 of the Act for an additional (insert number) days to (insert date).

The reason for the extension is (insert reason).

You may request a review of this decision by the Information and Privacy Commissioner, (insert address). Please note that you have 30 days from receipt of this letter to request a review.

Sincerely,

Coordinator

Freedom of Information and Privacy Protection

### **N° 3 Avis à l'auteur de la demande**

#### **● Prorogation du délai**

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

J'accuse réception de votre demande présentée en vertu de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée. Nous vous informons par la présente que le délai prévu de 30 jours pour répondre a été prorogé de (nombre) jours jusqu'au (date) en vertu de l'article 27 de la Loi, et ce (donner les raisons).

Vous pouvez interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée (adresse). Veuillez remarquer qu'un appel doit être interjeté dans les 30 jours suivant la réception de cette lettre.

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée



#### **No. 4 Notification to Requester**

- **Grant access**

Date

Requester Name  
Address

Reference Number

Dear :

I am replying to your access request under the Freedom of Information and Protection of Privacy Act. Access is available to (specify details).

Option: Fee

The fee for access is (enter amount). This has been calculated as follows:  
(enter details).

Less deposit (if any).

Please make your cheque or money order payable to the Treasurer of Ontario.

Option: Copy of record enclosed, no fee

A copy of the record is enclosed.

Option: View record

The record may be viewed (enter details).

Option: Identification required

Please present this letter and (enter details of identification).

Option: Continuing access

A schedule of dates is attached.

Option: Appeal

You may request a review of this decision by the Information and Privacy Commissioner, (insert address). Please note that you have 30 days from receipt of this letter to request a review.

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection

#### N°. 4 Avis à l'auteur de la demande

- Accès accordé

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

En réponse à votre demande présentée en vertu de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, nous vous avisons par la présente que vous pouvez avoir accès (préciser).

*Option:* Droit

Le droit exigé pour l'accès à ce document est de (montant). Ce droit comprend: (décompte, déduction faite du dépôt le cas échéant). Veuillez nous faire parvenir un chèque ou un mandat à l'ordre du trésorier de l'Ontario.

*Option:* Copie du document ci-jointe, sans droit

Vous trouverez ci-jointe une copie du document en question.

*Option:* Consultation du document

Vous pouvez consulter ce document (préciser).

*Option:* Vérification de l'indentité

Veuillez présenter cette lettre et (préciser les pièces d'identité à présenter).

*Option:* Accès continu

Vous trouverez ci-joint le calendrier des dates auxquelles vous pouvez consulter le document en question.

*Option:* Appel

Vous pouvez interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée. Veuillez remarquer qu'un appel doit être interjeté dans les 30 jours suivant la réception de cette lettre.

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

## **No. 5 Notification to Requester**

- **Record does not exist**
- **Refusal to grant access (full or partial)**

Date

Requester Name

Address

Reference Number

Dear :

I am replying to your request for access, received on (date), under the Freedom of Information and Protection of Privacy Act.

Option: Record does not exist

Access cannot be provided because the record does not exist.

Option: Full refusal

Access is denied to (insert details) under section (insert section number(s)) of the Act. This provision applies because (insert reason).

(Insert name and position) was responsible for the decision.

Option: Partial refusal

Access is granted to (insert details).

Access is denied to (insert details) under section (insert section number(s)) of the Act. This provision applies because (insert reason).

(Insert name and position) was responsible for the decision.

Option: Fee

Option: Access details, if required.

You may request a review of this decision by the Information and Privacy Commissioner, (insert address). Please note that you have 30 days from receipt of this letter to request a review.

Sincerely,

Coordinator

Freedom of Information and Privacy Protection

## Nº. 5 Avis à l'auteur de la demande

- Document inexistant
- Refus d'accès (global ou partiel)

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Nous accusons réception de votre demande présentée en vertu de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée.

*Option:* Document inexistant

Ce document n'existant pas, nous ne pouvons pas vous y donner accès.

*Option:* Refus global

L'accès (préciser à quoi) est refusé en vertu de l'article (des articles) (numéro(s)) de la Loi: (fournir des explications).

La personne responsable de cette décision est (nom et fonction).

*Option:* Refus partiel

L'accès (préciser à quoi) vous est accordé.

L'accès (préciser à quoi) vous est refusé en vertu de l'article (des articles)(numéro(s)) de la Loi, dont les dispositions s'appliquent ici parce que (préciser les raisons).

La personne responsable de cette décision est (nom et fonction).

*Option:* Droit

*Option:* Mode d'accès, le cas échéant

Vous pouvez interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée (adresse). Veuillez remarquer qu'un appel doit être interjeté dans les 30 jours suivant la réception de cette lettre.

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

**No. 6 Notification to Requester**

● **Access denied with no confirmation of existence**

Date

Requester Name  
Address

Reference Number

Dear :

In reply to your request received on (insert date) for information under the Freedom of Information and Protection of Privacy Act, access is denied. The existence of the record cannot be confirmed or denied in accordance with subsection (select either 21(5) or 14(3)) of the Act).

(Name and office) was responsible for this decision.

You are entitled to request that the Information and Privacy Commissioner review this decision. The Commissioner is located at (insert address). Please note that you have 30 days from receipt of this letter to request a review.

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection



## **N° 6 Avis à l'auteur de la demande**

### **● Refus d'accès au document sans confirmation de son existence**

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Suite à votre demande en vertu de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, qui nous est parvenue le (date), et conformément au paragraphe (21(5) ou 14(3)) de ladite loi, l'accès est refusé. Nous ne pouvons pas confirmer ou nier l'existence du document demandé.

La personne responsable de cette décision est (nom et fonction).

Vous pouvez interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée; son adresse est la suivante: (adresse). Veuillez remarquer qu'un appel doit être interjeté dans les 30 jours suivant la réception de cette lettre.

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

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## THIRD PARTY NOTICE RE PERSONAL INFORMATION

### EXPLANATORY NOTE

Ontario's *Freedom of Information and Protection of Privacy Act* has been in effect since January 1, 1988. The Act balances the public's right of access to government records with the need to protect the privacy of individuals about whom personal information is held by ministries and certain agencies.

When an access request is made under the Act by another individual for your personal information, and where it appears that this personal information may be released to the requester, the Head of the institution must notify you before a decision is made about releasing the information. This process allows you an opportunity to express any privacy concerns which you may have regarding the release of the personal information.

When you receive such a notice, you have two options:

- 1) You may consent in writing to the release of some or all of the information; or
- 2) You may submit written representations to the institution regarding your concerns about the release of the information and whether the release would be an unjustified invasion of your privacy.

In the latter case, the Head of the institution will consider your representations and all other relevant factors in making a decision about the release of the information. If the Head decides to release all or some of the information, you will be notified before it is released. You may then appeal the Head's decision to the Information and Privacy Commissioner, who will investigate the matter.

Should you require any further information or clarification, please contact the Freedom of Information and Privacy Coordinator named in the covering letter.

## AVIS AU TIERS

### AU SUJET DES RESEIGNEMENTS PERSONNELS

La *Loi de 1987 sur l'accès à l'information et la protection de la vie privée* est en vigueur depuis le 1er janvier 1988. La Loi établit un équilibre entre le droit du public d'avoir accès aux dossiers du gouvernement et la nécessité de protéger la vie privée des personnes au sujet desquelles les ministères et certains organismes possèdent des renseignements personnels.

Aux termes de la Loi, la personne responsable d'une institution doit vous avertir avant de prendre une décision lorsqu'elle reçoit une demande de renseignements personnels à votre sujet et qu'il apparaît que ces renseignements personnels peuvent être divulgués à l'auteur de la demande. Cette démarche vous donne l'occasion faire part de toute préoccupation que vous pourriez avoir pour votre vie privée et touchant à la divulgation des renseignements personnels.

Lorsque vous recevez un tel avis, vous pouvez faire l'une des deux choses suivantes:

1. Vous pouvez consentir par écrit à la divulgation de certains renseignements ou de la totalité de ceux-ci;
2. Vous pouvez soumettre à l'institution une déclaration écrite décrivant vos réserves à l'égard de la divulgation et indiquant si cette divulgation constitue selon vous une atteinte injustifiée à votre vie privée.

Dans ce dernier cas, au moment de prendre sa décision de divulguer ou non, la personne responsable de l'institution tiendra compte de votre préoccupation et de tous les autres facteurs pertinents. Si elle décide de divulguer la totalité ou une partie des renseignements, vous recevrez un avis avant leur divulgation. Vous pouvez appeler de la décision de la personne responsable auprès du Commissaire à l'information et à la protection de la vie privée, qui enquêtera sur la question.

Pour tout renseignement supplémentaire ou pour toute clarification, veuillez communiquer avec le

coordonnateur de l'accès à l'information et de la protection de la vie privée, dont le nom apparaît au bas de la lettre que vous avez reçue.

**No. 7(a) Notification to Third Party Affected by Disclosure**

● **Section 21 – personal information**

Date

Third Party Name  
Address

Reference Number

Dear :

The (name of institution) has received a request under the *Freedom of Information and Protection of Privacy Act* to disclose (describe records as they relate to the third party).

Your views regarding disclosure of these records would be appreciated.

Please indicate in writing whether or not you would consider disclosure of these records to be an invasion of your personal privacy. Your response must be received by (insert date). You will be notified in writing by (insert date) concerning our decision regarding release of these records.

For further information concerning the *Freedom of Information and Privacy Act* and your rights and responsibilities under the Act, please refer to the attached Explanatory Note on "third party notice re: personal information" or please contact me (or name, address, telephone number).

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection

**No. 7(a) Avis au tiers concerné par la divulgation de renseignements personnels**

● **Article 21**

Date

Nom du tiers :

Adresse :

N° de dossier :

Madame,

Monsieur,

L (nom de l'institution) a reçu, en vertu de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*, une demande de divulgation d (décrire les documents et leur rapport avec le tiers).

Nous vous serions reconnaissants de nous faire connaître votre opinion sur la divulgation de ces documents.

Veuillez indiquer par écrit si vous estimez que la divulgation de ces documents constitue ou non une atteinte à votre vie privée. Vous devez nous faire parvenir votre réponse d'ici le (date). Vous recevrez d'ici le (date) un avis écrit de notre décision concernant la divulgation de ces documents.

Pour de plus amples renseignements concernant la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*, de même que vos droits et vos responsabilités aux termes de cette loi, veuillez vous reporter à la note explicative ci-jointe intitulée "Avis à un tiers concernant des Renseignements Personnels" ou communiquer avec moi (ou nom, adresse et numéro de téléphone).

Veuillez accepter, Madame, Monsieur, mes salutations distinguées.

Le coordonnateur de l'accès à l'information et de la protection de la vie privée



## THIRD PARTY INFORMATION

### EXPLANATORY NOTE

The *Freedom of Information and Protection of Privacy Act* has been in effect since January 1, 1988. The Act provides a right of access to records held by government ministries and to certain of its agencies.

A request has been received for access to records in which you have an interest. A ministry or agency is required to provide access to as much of the record as possible without disclosing information that is exempt.

To be exempt from disclosure the "third party" information must meet all three of the criteria set out in Section 17 of the Act. These criteria are described below.

1. The information is a trade secret or scientific, technical, commercial, financial, or labour relations information.
2. The information was supplied, to the ministry or agency, in confidence. The information must have been explicitly supplied and consistently treated in a confidential manner.
3. One or more of the following harms will occur if the information is released.

The release of the information will:

- Prejudice the competitive position or interfere with the contractual or other negotiations of a person, group of persons, or organization. This prejudice or interference must be significant;
- Result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be supplied. This does not apply where a statute or regulation requires that the information be supplied;
- Result in undue loss or gain to any person, group, committee or financial institution or agency; or
- Reveal information supplied to, or the report of, a conciliation officer, mediator, labour

relations officer or other person appointed to resolve a labour relations dispute.

If you feel the exemption in Section 17 applies to the records that have been requested, this is your opportunity to make representations to the Head of the institution. Your representations should be directed only to potentially exempt information and must provide detailed evidence to support your claim to the exemption.

You may consent to the disclosure of some or all of the requested information.

Your representation will be one of the factors that the institution considers when making a decision regarding disclosure of the records. If the decision is to release all or some of the information that you believe should be exempt from disclosure, you will be notified before the record is released. If you disagree with the decision, an appeal may be made to the Information and Privacy Commissioner for Ontario, who will review the decision.

Should you require any further information or clarification, please contact the Freedom of Information and Privacy coordinator named on the accompanying letter.

## RENSEIGNEMENTS DE TIERS

La *Loi de 1987 sur l'accès à l'information et la protection de la vie privée* est en vigueur depuis le 1<sup>er</sup> janvier 1988. Elle prévoit un droit d'accès aux dossiers des ministères et de certains organismes du gouvernement.

Nous avons reçu une demande d'accès à des documents qui vous concernent au moins en partie. La Loi oblige tout ministère ou organisme à donner accès à la plus grande partie possible du document sans divulguer de renseignements qui seraient visés par une mesure d'exception.

Pour être visés par une mesure d'exception empêchant toute divulgation, les renseignements sur la tierce personne doivent satisfaire aux trois critères énoncés à l'article 17 de la Loi. Ces critères sont définis ci-dessous.

1. Les renseignements constituent un secret industriel ou des renseignements d'ordre scientifique, technique, commercial, financier ou ont trait aux relations de travail.
2. Les renseignements ont été transmis de manière confidentielle au ministère ou à l'organisme. Ils doivent avoir été transmis de manière explicitement confidentielle et traités systématiquement de la même manière.
3. La divulgation du document entraînera l'un ou l'autre, ou l'ensemble des torts définis ci-dessous.

La divulgation du document aura pour effet:

- de nuire à la situation concurrentielle ou d'entraver gravement les négociations contractuelles ou autres d'une personne, d'un groupe de personnes ou d'une organisation. Le préjudice ou l'entrave doivent être graves;
- d'interrompre la communication de renseignements semblables à l'institution, alors qu'il serait dans l'intérêt public que cette communication se poursuive. Cette condition ne s'applique pas là où un statut ou un règlement exige la divulgation du renseignement;
- de causer des pertes ou des profits indus à une personne, un groupe de personnes, un comité,

une institution ou un organisme financiers; ou

- de divulguer des renseignements fournis à un conciliateur, un médiateur, un agent des relations de travail ou une autre personne nommée pour régler un conflit de relations de travail, ou de divulguer le rapport de l'une de ces personnes.

Si vous estimez que l'exception prévue à l'article 17 s'applique aux documents demandés, vous avez l'occasion de transmettre vos observations à la personne responsable de l'institution en question. Vos observations ne doivent avoir trait qu'aux renseignements susceptibles d'être visés par une mesure d'exception et doivent fournir des preuves détaillées à l'appui de votre demande d'exception.

Vous pouvez consentir à la divulgation de quelques-uns ou de tous les renseignements demandés.

Vos observations constitueront l'un des facteurs dont l'institution tiendra compte au moment de prendre sa décision relative à la divulgation des documents. Si la décision est prise de divulguer la totalité ou une partie seulement de ce qui devrait, selon vous, être excepté, vous recevrez un avis en ce sens avant la divulgation du document. Si vous vous opposez à la décision, vous pouvez faire appel auprès du commissaire à l'information et à la protection de la vie privée pour l'Ontario, qui étudiera la décision.

Pour tout renseignement supplémentaire ou pour toute clarification, veuillez communiquer avec le coordonnateur de l'accès à l'information et de la protection de la vie privée, dont le nom apparaît au bas de la lettre d'accompagnement.

**N° 7(b) Notification to Third Party Affected by Disclosure**

**• Section 17 – Third Party Information**

Date

Third Party Name  
Address

Reference Number

Dear :

The (name of institution) has received a request under the *Freedom of Information and Protection of Privacy Act* to disclose (describe records as they relate to the third party).

Your views regarding disclosure of these records would be appreciated.

As the attached description of section 17 of the legislation on “third party information” indicates, the (name of institution) must release these records to the requester unless it can be shown that:

- 1) the records contain certain types of information (described in more detail on the attached sheet);
- 2) the information was supplied in confidence; and
- 3) its disclosure could be reasonably expected to result in one or more of the harms specified on the attached sheet.

After reviewing the attached material, please provide your views in writing to (name) by (date). You will be notified in writing by (date) concerning the (institution's) decision regarding the release of these records.

For further information, please contact (name, etc.).

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection

**No. 7(b) Avis au tiers concerné par la divulgation de renseignements personnels**

**• Article 17 – Renseignements de tiers**

Madame,  
Monsieur,

L (nom de l'institution) a reçu, en vertu de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*, une demande de divulgation d (décrire les documents et leur rapport avec le tiers).

Nous vous serions reconnaissants de nous faire connaître votre opinion sur la divulgation de ces documents.

Comme l'indique l'article 17 de la Loi, qui porte sur les renseignements de tiers que vous trouverez ci-inclus, l (nom de l'institution) doit divulguer ces documents à l'auteur de la demande, à moins qu'il soit possible de démontrer que:

1. les documents contiennent certains types de renseignements (décrits plus en détail sur la feuille ci-jointe);
2. les renseignements ont été transmis de manière confidentielle; et
3. leur divulgation a(e) pour effet probable de causer un ou des torts précisés sur la feuille ci-jointe.

Après avoir revu la feuille ci-jointe, veuillez donner votre opinion par écrit à (nom) d'ici le (date).

Vous recevrez avant le (date) un avis écrit de la décision d [nom de l'institution] concernant la divulgation de ces documents.

Pour de plus amples renseignements, veuillez communiquer avec (nom, etc.).

Veuillez accepter, Madame, Monsieur, mes salutations distinguées.

Le coordonnateur de l'accès à l'information et la protection de la vie privée

**No. 8 Notification to Requester**

- **Third party affected**
- **Time extension**

Date

Requester Name  
Address

Reference Number

Dear :

Your request for access under the Freedom of Information and Protection of Privacy Act was received on (insert date). The request may affect the interests of a third party.

The third party is being given an opportunity to make representations concerning disclosure of the record. A decision on whether the record will be disclosed will be made by (insert date), in accordance with subsection 28(4) of the Act.

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection



## N° 8 Avis à l'auteur de la demande

- Tiers concerné
- Délai prorogé

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Votre demande d'accès à un document en vertu de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée nous est parvenue le (date). Cette demande pourrait avoir une incidence sur les intérêts d'un tiers.

Nous donnons au tiers concerné la possibilité de faire des observations sur la divulgation des renseignements demandés. Conformément au paragraphe 28(4) de la Loi, la décision de divulguer ou non le document sera prise d'ici le (date).

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

## **No. 9 Notification to Requester**

- **After representations**
- **Grant access**

Date

Requester Name  
Address

Reference Number

Dear :

Following third party notification, a decision has been made to grant access to the record you requested.

The third party has 30 days to appeal this decision to the Information and Privacy Commissioner, otherwise access will be available on (insert date).

*Option:* Access details

(Provide details of access)

*Option:* Partial access details

(If only partial access is proposed, provide details, including sections of the Act, if denying access. Also state that the decision to deny access may be reviewed by the Information and Privacy Commissioner.)

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection

## N° 9 Avis à l'auteur de la demande

- Après observations d'un tiers
- Accès accordé

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Après avoir dûment avisé le tiers concerné, la décision a été prise de vous permettre l'accès aux renseignements que vous nous avez demandés.

Le tiers concerné a 30 jours pour interjeter appel de cette décision devant le commissaire à l'information et à la protection de la vie privée; en l'absence d'un appel, la divulgation prendra effet le (date).

*Option:* Détails relatifs au mode d'accès

(Fournir des détails sur le mode d'accès)

*Option:* Détails relatifs à l'accès partiel

(En cas d'accès partiel, fournir des explications, notamment les articles de la Loi justifiant le refus partiel. Préciser également que l'auteur de la demande peut interjeter appel de la décision devant le commissaire à l'information et à la protection de la vie privée.)

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

## **No. 10 Notification to Third Party**

- **After representations**
- **Grant access**

Date

Third Party    Name  
                    Address

Reference Number

Dear                :

Following your representation concerning disclosure of (details of record), a decision has been made to grant access (or partial access) to the requester.

In accordance with section 28 of the Freedom of Information and Protection of Privacy Act, you are entitled to request a review of this decision by the Information and Privacy Commissioner by (insert date), otherwise access will be provided to the requester.

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection

## **N° 10 Avis à un tiers concerné par la divulgation**

- **Après observations**
- **Accès accordé**

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Suite à vos observations sur la divulgation de (préciser le document), la décision a été prise de permettre à l'auteur de la demande l'accès demandé.

Conformément à l'article 28 de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, vous avez jusqu'au (date) pour interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée. En l'absence d'un appel, l'accès au document sera accordé à l'auteur de la demande.

Veillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée



**No. 11 Notification to Requester**

• **Denial of access to third party information**

Date

Requester Name  
Address

Reference Number

Dear :

In reply to your request for access received on (insert date), representations have been received from the third party. Access to the records is refused based on (insert specific provisions of the Act and the reason the provisions apply).

This decision was made by (insert name and office).

You are entitled to request a review of this decision by the Information and Privacy Commissioner, (insert address). Please note that you have 30 days from receipt of this letter to request a review.

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection

## **N° 11 Avis à l'auteur de la demande**

### **● Refus d'accès aux renseignements ayant une incidence sur un tiers**

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Suite à votre demande présentée en vertu de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, que nous avons reçue le (date), le tiers concerné nous a exposé les motifs pour lesquels il s'opposait à la divulgation des renseignements demandés. L'accès (préciser à quoi) vous est refusé en vertu de (article(s)) de la Loi, dont les dispositions s'appliquent ici parce que (préciser les raisons).

La personne responsable de cette décision est (nom et fonction).

Vous pouvez interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée (adresse). Veuillez remarquer qu'un appel doit être interjeté dans les 30 jours suivant la réception de cette lettre.

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

**No. 12 Notification to Third Party**

**• Denial of access to requester after third party representations**

Date

Third Party Name  
Address

Reference Number

Dear :

After consideration of your representations on why (details of record) should not be disclosed, the requester will be refused access based on (insert specific provisions of the Act and the reasons the provisions apply).

The decision was made by (insert name and office).

Please be advised that the requester may appeal this decision to the Information and Privacy Commissioner.

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection

## N° 12 Avis à un tiers

- **Refus d'accès de l'auteur de la demande aux renseignements après observations du tiers concerné**

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Suite à vos observations exposant les raisons pour lesquelles vous vous opposez à la divulgation des renseignements contenus dans (préciser le document), la décision a été prise de refuser l'accès du document en question à l'auteur de la demande en vertu de (articles) de la Loi dont les dispositions s'appliquent ici parce que (préciser les raisons).

La personne responsable de cette décision est (nom et fonction).

Nous vous avisons par la présente que l'auteur de la demande peut interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée.

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

**No. 13 Notification to Requester**

● **Response to a correction request**

Date

Requester Name  
Address

Reference Number

Dear :

Your request for a correction of personal information received on (enter date)

*Option:* Correction made

was made and a copy of the corrected record is attached. On request, you are entitled to have the correction sent to those persons to whom the information was disclosed over the past 12 months.

*Option:* Correction not made

was not made. A copy of the request has been attached to the record to record your disagreement. You are entitled to require that a further statement of disagreement be attached to the record and that the statement be sent to any person to whom the record was disclosed over the past 12 months.

This decision can be appealed to the Information and Privacy Commissioner, (insert address). Please note that you have 30 days from receipt of this letter to request a review.

Sincerely,

Coordinator  
Freedom of Information and Privacy Protection



## N° 13 Avis à l'auteur de la demande

### • Réponse à une demande de rectification

Date

Nom de l'auteur de la demande

Adresse

Numéro de référence:

(Madame ou Monsieur),

Nous avons reçu le (date) votre demande de rectification de renseignements personnels vous concernant. Nous

*Option:* Rectification effectuée

avons effectué la rectification demandée et vous trouverez ci-jointe une copie du document rectifié. Vous pouvez demander que toutes les personnes à qui ces renseignements ont été divulgués au cours des 12 derniers mois soient informées de cette rectification.

*Option:* Rectification non effectuée

n'avons pas effectué la rectification demandée. Nous avons joint une copie de votre demande de rectification aux renseignements en question pour consigner votre désaccord. Vous pouvez demander qu'une déclaration de désaccord proprement dite soit annexée à vos renseignements et envoyée à toutes les personnes à qui ces renseignements ont été divulgués au cours des 12 derniers mois.

Vous pouvez interjeter appel de la présente décision devant le commissaire à l'information et à la protection de la vie privée (adresse). Veuillez remarquer qu'un appel doit être interjeté dans les 30 jours suivant la réception de cette lettre.

Veuillez agréer, (madame ou monsieur), l'expression de nos sentiments distingués.

(Coordonnatrice ou Coordonnateur)

Accès à l'information et protection de la vie privée

## Appendix IV

### Research Agreement

Freedom of Information and Protection of Privacy

#### This agreement is made between

Name of Researcher (hereinafter referred to as the researcher)	Name of Institution (hereinafter referred to as the institution)
<b>and</b>	
The researcher has requested access to the following records containing personal information in the custody or control of the institution:	

#### The researcher understands and promises to abide by the following terms and conditions:

1. The researcher will not use the information in the records for any purpose other than the following research purposes unless the researcher has the institution's written authorization to do so: (Describe research purpose below)
2. The researcher will give access to personal information in a form in which the individual to whom it relates can be identified only to the following persons: (Name persons below)
3. Before disclosing personal information to persons mentioned above, the researcher will enter into an agreement with those persons to ensure that they will not disclose it to any other person.
4. The researcher will keep the information in a physically secure location to which access is given only to the researcher and the persons mentioned above.
5. The researcher will destroy all individual identifiers in the information by \_\_\_\_\_ (Date)
6. The researcher will not contact any individual to whom personal information relates, directly or indirectly, without the prior written authority of the institution.
7. The researcher will ensure that no personal information will be used or disclosed in a form in which the individual to whom it relates can be identified without the written authority of the institution.
8. The researcher will notify the institution in writing immediately upon becoming aware that any of the conditions set out in this agreement have been breached.

Signed at _____, this _____ day of _____ 19____	
Signature of Researcher	
Signature of Official	
Name of Researcher	
Name and Position of Official	
Address	
Name of Institution	
Address	
Telephone No.	Telephone No.



## Appendix V

### REQUEST FOR WAIVER OF NOTICE TO INDIVIDUAL OF COLLECTION OF PERSONAL INFORMATION

Freedom of Information and Protection of Privacy Act, s.39(2)

1. *Institution:*

2. *Description of Information to be Collected:*

3. *Authority for Collection:*

4. *Manner of Collection:*

☐

(i) directly from the individual to whom the information relates.

☐

(ii) indirect collection pursuant to s.39(1) paragraph \_\_\_\_\_.

5. *Anticipated number of Individuals in respect of whom Waiver is sought:*

6. *Use of Information Collected:*

(i) *Describe Purpose of Collection:*

(ii) *s.41/42 Authorization for Use:* (insert section and paragraph number)

(iii) *Use Listed in Directory*

☐

Yes

☐

No (explain)

7. Reason for Waiver:

(i) Reason

- ☐ Notification Frustrates Purpose of Indirect Collection
- ☐ Statutory Authority for Indirect Collection
- ☐ Administrative Burden/Cost of Notification
- ☐ Impossibility/Difficulty of Notification
- ☐ Authorization of Commissioner
- ☐ Implied Consent
- ☐ Collection is from another Institution which has Notified individual
- ☐ Other (explain): \_\_\_\_\_

(ii) Explain why notification cannot be given.

8. Other material attached:

☐

\_\_\_\_\_  
Date

\_\_\_\_\_  
Head of Institution



## Appendix VI

### NOTIFICATION OF:

- NEW USE/DISCLOSURE OF PERSONAL INFORMATION UNDER S.46(3)
- NEW OR PREVIOUSLY UNREPORTED PERSONAL INFORMATION BANKS

Institution: \_\_\_\_\_

Complete *Section A* for new regular use or disclosure of personal information.

Complete *Section B* for new or previously unreported personal information banks.

### SECTION A: NEW REGULAR USE/DISCLOSURE

Name of Personal Information Bank	Directory Page No.
Purpose for which the personal information was obtained or compiled	
Description of new use or disclosure	
Specify subsection under which new use or disclosure is allowed [example: Section 42(c)] <div>Section 41 (_____)                      Section 42 (_____)</div>	
Categories of users for new use/disclosure 1) As described in Directory of Personal Information Banks _____ OR 2) New _____. Specify:	
Other Changes to PIB Description resulting from the new use or disclosure	Effective date of new use/disclosure

SECTION B OVER

## SECTION B: NEW OR PREVIOUSLY UNREPORTED PERSONAL INFORMATION BANKS

Name of Personal Information Bank	
Location of Bank	
Legal authority to establish this bank	
Types of information maintained	
Uses	
Categories of users	
Categories of individuals for whom records are maintained	
Storage	Retrievability
Access Controls	Retention and Disposal
Official Responsible/title, address and telephone number	

### APPROVALS

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Return completed form to:  
Freedom of Information and Privacy Branch  
18th Floor, 56 Wellesley Street West  
Toronto, Ontario  
M7A 1Z6





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